

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MONTGOMERY, VIRGINIA HELD ON THE 10th DAY OF SEPTEMBER 2007, AT 6:00 P.M. IN THE BOARD CHAMBERS, MONTGOMERY COUNTY GOVERNMENT CENTER, 755 ROANOKE STREET, CHRISTIANSBURG, VIRGINIA:

PRESENT:	Steve L. Spradlin	-Chair
	Mary W. Biggs	-Vice Chair
	Doug Marrs	-Supervisors
	John A. Muffo	
	James D. Politis	
	B. Clayton Goodman, III	-County Administrator
	L. Carol Edmonds	-Assistant County Administrator
	Martin M. McMahon	-County Attorney
	T.C. Powers	-Planning Director
	Vickie L. Swinney	-Secretary, Board of Supervisors
ABSENT:	Gary D. Creed	-Supervisors
	Annette S. Perkins	

CALL TO ORDER

The Chair called the meeting to order.

INTO CLOSED MEETING

On a motion by Doug Marrs, seconded by Mary W. Biggs and carried unanimously,

BE IT RESOLVED, The Board of Supervisors hereby enters into Closed Meeting for the purpose of discussing the following:

- Section 2.2-3711 (3) Discussion or Consideration of the Acquisition of Real Property for Public Purpose, or of the Disposition of Publicly Held Real Property, Where Discussion in an Open Meeting Would Adversely Affect the Bargaining Position or Negotiating Strategy of the Public Body
1. Prices Fork Elementary School
 2. Courthouse
- (1) Discussion , Consideration or Interviews of Prospective Candidates for Employment; Assignment, Appointment, Promotion, Performance, Demotion, Salaries, Disciplining or Resignation of Specific Officers, Appointees or Employees of Any Public Body
1. Personnel
 2. Agency on Aging

The vote on the foregoing motion was as follows:

<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Mary W. Biggs	None	Gary D. Creed
Doug Marrs		Annette S. Perkins
James D. Politis		
John A. Muffo		
Steve L. Spradlin		

OUT OF CLOSED MEETING

On a motion by Mary W. Biggs, seconded by James D. Politis and carried unanimously,

BE IT RESOLVED, The Board of Supervisors ends their Closed Meeting to return to Regular Session.

The vote on the foregoing motion was as follows:

<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Doug Marrs	None	Gary D. Creed
James D. Politis		Annette S. Perkins
John A. Muffo		
Mary W. Biggs		
Steve L. Spradlin		

CERTIFICATION OF CLOSED MEETING

On a motion by Mary W. Biggs, seconded by James D. Politis and carried unanimously,

WHEREAS, The Board of Supervisors of Montgomery County has convened a Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by the Board that such Closed Meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED, That the Board of Supervisors of Montgomery County, Virginia hereby certifies that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion conveying the closed meeting were heard, discussed or considered by the Board.

VOTE

AYES

James D. Politis
John A. Muffo
Mary W. Biggs
Doug Marrs
Steve L. Spradlin

NAYS

None

ABSENT DURING VOTE

Gary D. Creed
Annette S. Perkins

ABSENT DURING MEETING

Gary D. Creed
Annette S. Perkins

INVOCATION

The invocation was given by Chair Spradlin.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

DELEGATION

Virginia Department of Transportation

David Clarke, VDOT Residency Administrator, provided an update on road issues in Montgomery County. Mr. Clarke reported that the summer paving is underway, including paving of Rt. 11 from Radford to Christiansburg, and paving portions of Interstate 81. The Plum Creek Bridge located on Rt. 11 is being repaired and a temporary traffic light has been installed to help direct traffic.

Secondary Six-Year Road Improvement Plan Mr. Clarke reported that the deadline for submitting the Secondary Six-Year Road Improvement Plan has been changed. The priority list will not be due until the spring of 2008 instead of the winter of 2007. Therefore, the joint public hearing on the Secondary Six-Year Road Improvement Plan can be held sometime in January or February.

Mr. Clarke also reported that chemicals have been put down on Stroubles Creek Road to help control the dust as requested by Supervisor Spradlin and paving has begun on Poverty Creek Road.

Supervisor Politis commended VDOT on a nice job on repairing Brush Creek Road after a heavy storm went through the area. Several areas were not passable. Supervisor Politis also reported Laurel Ridge Road needed repair due to this storm as there are several large dirt piles created by the rain

Supervisor Marrs asked if Ellett Road had a speed limit sign posted from the Christiansburg Town Limits to Lusters Gate. If not, there needs to be signs posted. David Clarke responded he will check to see if speed limit signs are posted.

Supervisor Spradlin reported Mash Run Road needs repairing as it is in terrible shape. Mr. Clarke responded that this road was due to be paved but will see if patching could be done in the interim.

Supervisor Spradlin also reported that Mt. Zion Road was in need of patching as there are several large potholes in the road. Motorists are having to drive around them.

Montgomery County Extension Office

Michelle Adcock and Barry Robinson updated the Board on summer events held by the 4-H Program, Family of Consumer Science, and Agriculture and Natural Resources. There were numerous summer events held as follows:

- 4-H Fair held at the Sinkland Farm, which included a horse show, livestock show, agriculture show, and chicken and rabbit parade.
- 4-H Summer Camp, with 120 campers from Montgomery County, and a total of 400 campers.
- New River Agriculture Day held at Kentland Farm.

The Extension Office is working on their fall programs, which include numerous after school programs to be held at various schools in Montgomery County.

PUBLIC ADDRESS

Alan Mandzac addressed the Board about the inefficiencies in the operation of the Montgomery County Public School's Facilities Department. He cited concerns about the unnecessary awarding of contracts through sole source purchase when there was ample time to seek procurement through bids, thus creating high purchase costs. Mr. Mandzac also submitted a freedom of information request addressed to the School Board requesting information regarding hazardous waste stored in the schools.

There being no further speakers, the public address session was closed.

CONSENT AGENDA

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously, the Consent Agenda dated September 10, 2007 was approved. The vote was as follows:

<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
James D. Politis	None	Gary D. Creed
Doug Marrs		Annette S. Perkins
John A. Muffo		
Mary W. Biggs		
Steve L. Spradlin		

A-FY-08-38 COMMONWEALTH'S ATTORNEY

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously,

BE IT RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that the General Fund was granted an appropriation in addition to the annual appropriation for the fiscal year ending June 30, 2008 for the function and in the amount as follows:

220	Commonwealth's Attorney	\$1,111
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The source of the funds for the foregoing appropriation is as follows:

<u>Revenue Account</u>	
419104	Confiscations
	\$1,111

Said resolution appropriates monies received in the Forfeited Asset Sharing Program from the Department of Criminal Justice Services.

A-FY-08-39 SHERIFF RECOVERED COSTS & GRANT APPROPRIATION

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously,

BE IT RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that the General Fund was granted an appropriation in addition to the annual appropriation for the fiscal year ending June 30, 2008, for the function and in the amount as follows:

320	Sheriff – County	\$1,279
321	Sheriff – Grants	<u>\$40,455</u>
	Total	\$41,734

The sources of the funds for the foregoing appropriation are as follows:

<u>Revenue Account</u>	
419108	Recovered Costs
424401	Project Lifesaver
424401	DMV Grant
	<u>40,230</u>
	Total
	\$41,734

Said resolution appropriates recovered costs, Project Lifesaver and DMV grant funds for use by the Sheriff's department.

A-FY-08-40 ELLISTON FIRE DEPARTMENT

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously,

BE IT RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that the General Fund was granted an appropriation in addition to the annual appropriation for the fiscal year ending June 30, 2008, for the function and in the amount as follows:

330	Elliston Fire Department	\$2,867
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The source of the funds for the foregoing appropriation is as follows:

<u>Revenue Account</u>		
02-419108	Recovered Costs	\$2,867

Said resolution appropriates funds received from the surplus of an Elliston Fire Department brush truck.

A-FY-08-41
SCHOOL TITLE INSURANCE

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously,

BE IT RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that the General Fund is granted an appropriation in addition to the annual appropriation for the fiscal year ending June 30, 2008, for the function and in the amount as follows:

940	Transfer to School Capital Projects Fund	\$17,370
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The source of funds for the foregoing appropriation is as follows:

451203	Undesignated Fund Balance	\$17,370
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BE IT FURTHER RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that the County Capital Projects Fund is granted an appropriation for the fiscal year ending June 30, 2008, for the function and in the amount as follows:

19	School Capital Projects	\$17,370
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The source of funds for the foregoing appropriation is as follows:

<u>Revenue Accounts:</u>		
451100	Transfer from General Fund	\$ 17,370

Said resolution appropriates additional funds to cover the cost of title insurance for the Christiansburg Middle School and Eastern Montgomery High School.

A-FY-08-42
SCHOOL OPERATING FUND
RE-APPROPRIATE PURCHASE ORDER BALANCES

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously,

BE IT RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that the General Fund is granted an appropriation in addition to the annual appropriation for the fiscal year ending June 30, 2008, for the function and in the amount as follows:

941	Transfer to School Operating Fund	\$1,513,435
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The source of funds for the foregoing appropriation is as follows:

451203	Undesignated Fund Balance	\$1,513,435
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BE IT FURTHER RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that the School Operating Fund was granted an appropriation in addition to the annual appropriation for the fiscal year ending June 30, 2008, for the function and in the amount as follows:

<u>School Operating</u>		
561000	Instruction	\$ 174,924
564000	Operations and Maintenance	467,233
563000	Transportation	<u>871,278</u>
Total		\$1,513,435

The source of funds for the foregoing appropriation is as follows:

<u>Revenue Account:</u>	
451204	Transfer from General Fund
	\$1,513,435

Said resolution re-appropriates monies supporting the balances of outstanding purchase orders from FY 06-07 for Montgomery County Public Schools.

R-FY-08-29
TECHNOLOGY RESERVE FUND
CARRYOVER FUNDS FROM FY07

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously,

WHEREAS, The Board of Supervisors approved establishment of a Technology Reserve Fund in the amount of \$300,000 on October 11, 2005; and

WHEREAS, Over \$86,000 remained at the end of Fiscal Year 2006 due to vacancy savings in Information Management Services; and

WEREAS, The Technology Reserve Fund was increased in FY 07 to \$386,000; and

WHEREAS, Over \$38,000 remained at the end of Fiscal Year 2007 due to vacancy savings in Information Management Services; and

WHEREAS, The actual cost and timeframe for implementation of some technology projects has not yet been established.

NOW THEREFORE BE IT RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that the Technology Reserve Fund is increased from \$386,000 to \$424,000 to cover the future costs of technology projects.

R-FY-08-30
LIVESTOCK CLAIM
LARRY DAVIS

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously,

BE IT RESOLVED, By the Board of Supervisors of the County of Montgomery, Virginia, that Larry V. Davis is hereby compensated \$400.00 for the loss of one horse.

R-FY-08-31
APPOINTMENT
NEW RIVER VALLEY
ECONOMIC DEVELOPMENT ALLIANCE

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously,

BE IT RESOLVED, The Board of Supervisors of Montgomery County, Virginia hereby appoints **James A. Mattox** as Montgomery County's at-large representative on the New River Valley Economic Development Alliance effective September 11, 2007 and expiring September 10, 2008.

R-FY-08-32
APPOINTMENT
TOWING ADVISORY BOARD
TOWING COMPANY REPRESENTATIVE

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously,

BE IT RESOLVED, The Board of Supervisors of Montgomery County, Virginia hereby reappoints **Barry Harmon** to the Towing Advisory Board as Towing and Recovery Operator company representative effective September 12, 2007 and expiring September 11, 2011.

R-FY-08-33
TOWING ADVISORY BOARD
FIRE/RESCUE REPRESENTATIVE AND ALTERNATE

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously,

BE IT RESOLVED, The Board of Supervisors of Montgomery County, Virginia hereby reappoints **Malvin L. Wells** to the Towing Advisory Board as Fire/Rescue Department representative and reappoints **Jimmy Epperly** as his alternate effective September 12, 2007 and expiring September 11, 2011.

R-FY-08-34
TOWING ADVISORY BOARD
CITIZEN REPRESENTATIVE – ALTERNATE

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously,

BE IT RESOLVED, The Board of Supervisors of Montgomery County, Virginia hereby reappoints **Wayne Myers** as alternate for the citizen representative on the Towing Advisory Board effective September 12, 2007 and expiring September 11, 2011.

OLD BUSINESS

ORD-FY-08-06
AN ORDINANCE AMENDING THE ZONING CLASSIFICATION
OF APPROXIMATELY 41 ACRES IN THE RINER MAGISTERIAL DISTRICT
LOCATED ON THE WEST SIDE OF RINER ROAD (SR 8)
IDENTIFIED AS TAX MAP PARCELS NO. 119-A-37A
AND 43A (ACCT # 033369 AND 071118)
FROM AGRICULTURE (A-1) TO GENERAL BUSINESS (GB)
MONTGOMERY COUNTY BOARD OF SUPERVISORS
AUBURN ELEMENTARY SCHOOL

On a motion by James D. Politis, seconded by Mary W. Biggs and carried unanimously,

BE IT ORDAINED, By the Board of Supervisors of Montgomery County, Virginia that it hereby finds that the proposed rezoning is in compliance with the Comprehensive Plan and meets the requirement for public necessity, convenience, general welfare and good zoning practice, and therefore the zoning classification of that certain tracts or parcels of land consisting of 41 acres of land is hereby amended and rezoned from the zoning classification of Agriculture (A-1) to General Business (GB) with the following proffered condition:

In accordance with §10-54 (1)(i) of the Zoning Ordinance, the Montgomery County Board of Supervisors hereby proffers that future use of properties requested for rezoning to General Business (GB) shall be limited to the following uses:

- Church
- Civic Club (including Community Museum)
- Community Center (proposed definition as approved by the Board of Supervisors)
- Conference or training center
- Day Care Center
- Fire, police, and rescue facilities
- Library
- Office, administrative, business or professional
- Park (lighted and unlighted)
- Public utility lines, other distribution or collection facilities
- Public utility lines, water or sewer
- School
- Telecommunications tower, attached

This action was commenced upon the application of the Montgomery County Board of Supervisors (Agent: B. Clayton Goodman, III, County Administrator).

The property is located on the west side of Riner Road (SR 8) and is identified as Tax Parcels No. 119-A-37A and 43A (Acct #033369 and 071118) in the Riner Magisterial District (District D). The property currently lies in an area designated as Village Expansion in the Comprehensive Plan.

This ordinance shall take effect upon adoption.

The vote on the foregoing ordinance was as follows:

<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
John A. Muffo	None	Gary D. Creed
Doug Marrs		Annette S. Perkins
Mary W. Biggs		
James D. Politis		
Steve L. Spradlin		

ORD-FY-08-07
AN ORDINANCE AMENDING THE ZONING CLASSIFICATION
OF APPROXIMATELY 30 ACRES IN THE RINER MAGISTERIAL DISTRICT
LOCATED ON THE WEST SIDE OF RINER ROAD (SR 8)
IDENTIFIED AS TAX MAP PARCELS NO. 119-A-38, 39, 40, 41, 42, AND 43
(ACCT # 070698, 070699, 070700, 070701, 070702, AND 070703)
FROM AGRICULTURE (A-1) TO GENERAL BUSINESS (GB)
MONTGOMERY COUNTY SCHOOL BOARD
AUBURN MIDDLE AND HIGH SCHOOL

On a motion by James D. Politis, seconded by Mary W. Biggs and carried unanimously,

BE IT ORDAINED, By the Board of Supervisors of Montgomery County, Virginia that it hereby finds that the proposed rezoning is in compliance with the Comprehensive Plan and meets the requirement for public necessity, convenience, general welfare and good zoning practice, and therefore the zoning classification of that certain tracts or parcels of land consisting of 30 acres of land is hereby amended and rezoned from the zoning classification of Agriculture (A-1) to General Business (GB) with the following proffered condition:

In accordance with §10-54 (1)(i) of the Zoning Ordinance, the Montgomery County School Board hereby proffers that future use of properties requested for rezoning to General Business (GB) shall be limited to the following uses:

- Church
- Civic Club (including Community Museum)
- Community Center (proposed definition as approved by the Board of Supervisors)
- Conference or training center
- Day Care Center
- Fire, police, and rescue facilities
- Library
- Office, administrative, business or professional
- Park (lighted and unlighted)
- Public utility lines, other distribution or collection facilities
- Public utility lines, water or sewer
- School
- Telecommunications tower, attached

This action was commenced upon the application of the Montgomery County School Board (Agent: Daniel A. Berenato, P.O.C.).

The property is located on the west side of Riner Road (SR 8) and is identified as Tax Parcels 119-A-38, 39, 40, 41, 42, and 43 (Acct # 070698, 070699, 070700, 070701, 070702, and 070703) in the Riner Magisterial District (District D). The property currently lies in an area designated as Village Expansion in the Comprehensive Plan.

This ordinance shall take effect upon adoption.

The vote on the foregoing ordinance was as follows:

<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Doug Marrs	None	Gary D. Creed
Mary W. Biggs		Annette S. Perkins
John A. Muffo		
James D. Politis		
Steve L. Spradlin		

ORD-FY-08-08
AN ORDINANCE AMENDING CHAPTER 10 ENTITLED ZONING
SECTIONS 10-23, 10-24, 10-25 AND 10-26 RESPECTIVELY OF
THE CODE OF THE COUNTY OF MONTGOMERY, VIRGINIA BY
REQUIRING GREEN SPACE IN COMPACT DEVELOPMENT IN
RURAL RESIDENTIAL DISTRICT, R-1 RESIDENTIAL DISTRICT,
R-2 RESIDENTIAL DISTRICT AND THE R-3 RESIDENTIAL DISTRICT
HELD IN PRIVATE OWNERSHIP BE OWNED BY A HOMEOWNER'S
ASSOCIATION OR OTHER FORM OF COMMON INTEREST PRIVATE
OWNERSHIP COMPARABLE TO A HOMEOWNER ASSOCIATION

On a motion by Mary W. Biggs, seconded by James D. Politis and carried unanimously,

BE IT ORDAINED, By the Board of Supervisors of the County of Montgomery, Virginia, that Chapter 10, entitled Zoning, Sections 10-23, 10-24, 10-25 and 10-26, respectively of the Code of the County of Montgomery, Virginia, shall be amended and reordained as follows:

Sec. 10-23. R-R Rural Residential District.

(1) *Purpose.* The R-R Rural Residential District is composed of certain quiet, low-density, residential areas with a rural character, plus certain open areas where similar residential development appears likely to occur. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage a suitable environment for family life, to provide for an orderly transition from predominately agricultural or forestal uses to mostly rural residential uses, and to strictly limit activities of a commercial nature. To these ends, development is limited to

relatively low densities and permitted uses are limited basically to single-family dwellings for the residents, home-occupation uses for compatible home-based businesses, as well as certain additional institutional uses such as schools, parks and churches that serve the residents of the district. The purpose of the R-R district is to accommodate residential development of a strictly rural nature, and therefore is generally not intended to be served with public water and wastewater services.

(2) *Qualifying lands.* Lands qualifying for inclusion in the R-R zoning district shall be within areas mapped as rural, rural communities, or residential transition in the comprehensive plan. Qualifying lands shall generally not include those served or planned to be served by public water or sewer service. The minimum area required to create a district shall be five (5) acres of contiguous total land.

(3) *Uses permitted by right.* The following uses are permitted by right, subject to compliance with all approved plans and permits, development standards and performance standards contained in this chapter, and with all other applicable regulations:

- (a) Agriculture, small-scale.
- (b) Bed and breakfast homestay.
- (c) Church.
- (d) Dwelling, single-family.
- (e) Home occupation.
- (f) Park, unlighted.
- (g) Pet, farm.
- (h) Pet, household.
- (i) Playground, unlighted.
- (j) Public utility lines, other; public utility lines, water and sewer.
- (k) School.
- (l) Telecommunications tower, attached.

(4)(i) *Uses permissible by special use permit.* The following uses may be permitted by the board of supervisors as special uses, subject to the requirements of this chapter and to all other applicable regulations:

- (a) Bed and breakfast inn.
- (b) Cemetery.
- (c) Civic club.
- (d) Country club.
- (e) Day care center.
- (f) Fire, police and rescue stations.
- (g) Golf course.
- (h) Golf driving range.
- (i) Home business.
- (j) Park, lighted.
- (k) Playground, lighted.
- (l) Public utility substations.
- (m) Public utility plant, water or sewer.
- (n) Stable, commercial.
- (o) Telecommunications tower, freestanding.
- (p) Veterinary practice, animal hospital.
- (q) Structures over fifty (50) feet in height.

(4)(ii) The following uses may be permitted by the board of zoning appeals as special uses, subject to the requirements of this chapter and all other applicable regulations:

- (a) Accessory structures greater than twelve hundred (1,200) square feet in area and/or eighteen (18) feet in height.

(5) *Lot requirements.*

- (a) *Minimum lot area.*

1. For small-scale agriculture: Five (5) acres.
2. For all other uses: One and one-half (1.5) acres.

(b) *Lot access.* Lots shall be accessed from a road in the Virginia Department of Transportation (VDOT) system.

(c) *Maximum coverage.*

1. Buildings shall not exceed ten (10) percent of gross site area.
2. Impervious surfaces shall not exceed thirty (30) percent of gross site area.

(d) *Minimum width.* One hundred twenty (120) feet at the setback line of front yard.

(e) *Maximum length/width ratio.* Five to one (5:1) for any lot less than fifty (50) acres.

(6) *Building requirements.*

(a) *Minimum yards.*

1. *Front.* Forty (40) [feet] (also refer to section 10-41(16) for setbacks from existing intensive agriculture operations).
2. *Side.* The minimum side yard for each main structure shall be fifteen (15) feet for each principal structure.
3. *Rear.* Each main structure shall have a rear yard of forty (40) feet.
4. *Accessory buildings.* No accessory building may be located closer than ten (10) feet to any side or rear lot line.

(b) *Building height.*

1. No building shall exceed thirty-five (35) feet in height, as defined.
2. No structure shall exceed fifty (50) feet in height, as defined, unless authorized by special use permit.

(7) *Use limitations.* [Reserved.]

(8) *Compact development option.* The purpose of the compact development option is to provide flexibility in site design in order to encourage:

- Natural resource preservation
- Pedestrian-friendly streetscapes
- Cost-efficiency in providing infrastructure
- Appropriate design solutions for unique site conditions

Use of the compact development option is voluntary on the part of applicants.

The compact development option permits smaller lot sizes in return for providing permanent green space within the development, and a more compact, cost-effective network of streets and utilities. Except for modifications to the lot and building requirements defined below, all other provisions of the R-R district pertain to the compact development option.

(a) *Lot requirements for compact option.*

1. *Minimum lot size.* One (1) acre, provided that no less than twenty-five (25) percent of the gross area parent tract is preserved in permanent green space, as defined herein.
2. *Minimum required green space.*

a. Minimum lot area. Twenty-five (25) percent of the gross area parent tract. No one (1) lot of such required green space in any compact development shall be less than one and one-quarter (1.25) acres. Green space may include active or passive recreational uses, and may be held in either public or private ownership. If held in private ownership, the green space shall be held by a homeowner's association or other form of common interest private ownership comparable to a homeowner association acceptable to the Zoning Administrator. Green space established for purposes of meeting the requirements of this provision shall not be included as part of any residential lot, and shall be restricted from any future development by the establishment of permanent conservation easements held in perpetuity by a public or private entity acceptable to the county. Accessory structures such as picnic shelters, ball fields, ~~and~~ nature trails and other similar recreational amenities shall be permitted within the green space. Parking areas and enclosed buildings are prohibited on the green space.

b. Maximum length/width ratio. Five to one (5:1).

c. Minimum width. One hundred (100) feet at the setback line of the front yard.

(b) *Building requirements for compact option.* Minimum yards:

1. *Front.* Thirty (30) feet.

2. *Side.* Ten (10) feet for each principal structure.

3. *Rear.* Thirty (30) feet.

4. *Accessory buildings.* No less than ten (10) feet to side or rear lot line.

Sec. 10-24. R-1 Residential District.

(1) *Purpose.* The R-1 Residential District is intended to accommodate moderate density, suburban residential uses to be served by public water and sewer facilities and low density suburban residential uses in the village expansion and residential transition areas to be served by public water and/or sewer facilities. It includes areas currently zoned R-1 and planned for residential transition, villages, village expansion and urban expansion as shown in the comprehensive plan. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage, insofar as compatible with the intensity of land use, a suitable environment for family life and to permit certain limited commercial and institutional uses of a scale and character that will not create concentrations of traffic, crowds of customers, general outdoor advertising or other conflicts with the neighboring residential uses.

To these ends, retail activity is sharply limited, and this district is protected against encroachment of general commercial or industrial uses. Residential uses are limited to single family structures. Although this district is basically residential in character, certain compatible public and semipublic uses are permitted in the district.

(2) *Qualifying lands.* Lands qualifying for inclusion in the R-1 zoning district shall be R-1 residential on the date of adoption of this chapter and other lands within areas mapped as residential transition, village, village expansion, or urban expansion in the comprehensive plan. The minimum area required to create a district shall be three (3) acres of total contiguous land.

(3) *Uses permitted by right.* The following uses are permitted by right, subject to compliance with all approved plans and permits, development standards and performance standards contained in this chapter, and with all other applicable regulations:

- (a) Bed and breakfast homestay.
- (b) Church.
- (c) Dwelling, single-family.
- (d) Home occupation.
- (e) Library.
- (f) Pet, household.
- (g) Public utility lines, other.
- (h) Public utility lines, water or sewer.
- (i) School.
- (j) Telecommunications tower, attached.

(4)(i) *Uses permissible by special use permit.* The following uses may be permitted by the board of supervisors as special uses, subject to the requirements of this chapter and to all applicable regulations:

- (a) Bed and breakfast inn.
- (b) Cemetery.
- (c) Civic club.
- (d) Country club.
- (e) Day care center.
- (f) Fire, police and rescue stations.
- (g) Funeral home.
- (h) Golf course.
- (i) Home business.
- (j) Nursing home.
- (k) Park, lighted or unlighted.
- (l) Playground, lighted or unlighted.
- (m) Private club.
- (n) Public utility plant, other.
- (o) Public utility plant, water or sewer.

(4)(ii) The following uses may be permitted by the board of zoning appeals as special uses, subject to the requirements of this chapter and all other applicable regulations:

- (a) Accessory structures greater than twelve hundred (1,200) square feet in area and/or eighteen (18) feet in height.
- (b) Cemetery.
- (c) Civic club.
- (d) Country club.
- (e) Day care center.
- (f) Fire, police and rescue stations.
- (g) Funeral home.
- (h) Golf course.
- (i) Home business.
- (j) Nursing home.
- (k) Park, lighted or unlighted.
- (l) Playground, lighted or unlighted.
- (m) Private club.
- (n) Public utility plant, other.
- (o) Public utility plant, water or sewer.

(5) *Lot requirements.*

- (a) *Minimum lot area.* Twenty thousand (20,000) square feet.
- (b) *Lot access.* Lots shall be accessed from a road in the Virginia Department of Transportation (VDOT) system.
- (c) *Maximum lot coverage.* Building coverage shall not exceed thirty (30) percent of gross site area. Impervious surfaces shall not exceed fifty (50) percent of gross site area.
- (d) *Minimum width.* One hundred (100) feet at the setback line of the front yard.
- (e) *Maximum length/width ratio.* Five to one (5:1).

(6) *Building requirements.*

(a) *Minimum yards.*

1. *Front.* Forty (40) feet.
2. *Side.* Fifteen (15) feet for each principal structure.
3. *Rear.* Forty (40) feet.
4. *Accessory buildings.* Ten (10) feet to any side or rear lot line.

(b) *Maximum building height.* Buildings may be erected up to thirty-five (35) feet in height from grade, except that:

1. The height limit for dwellings may be increased up to ten (10) feet, provided that there are two (2) side yards for each permitted use, each of which is fifteen (15) feet or more, plus one (1) foot or more of side yard for each additional foot of building height over thirty-five (35) feet.
2. A public or semipublic building such as a school, church, library or hospital may be erected to a height of sixty (60) feet from grade, provided that required front, side and rear yards shall be increased one (1) foot for each foot in height over thirty-five (35) feet.
3. No accessory building which is within ten (10) feet of any party lot line shall be more than one (1) story high. All accessory buildings shall be less than the main building in height.

(7) *Use limitations.*

(a) *Public water and wastewater service.* Public water and wastewater services are required for all moderate density developments in any R-1 district established after the date of adoption of this chapter. In instances when public water or public wastewater service is not available, low density developments located in Village Expansion and Residential Transitions areas as indicated on the Comprehensive Plan may be allowed in R-1 when these developments are serviced by either public water or public wastewater, but not both.

(b) *Keeping and raising horses and ponies.*

1. Horses and ponies may only be kept for personal enjoyment and not for commercial purposes;
2. A minimum of five (5) acres of open or forestal land is available for the horses and ponies; and
3. No more than two (2) horses and ponies collectively (being one (1) horse and one (1) pony, two (2) horses, or two (2) ponies) shall be permitted per each five (5) acres with a maximum of four (4) horses and ponies collectively for parcels of land of ten (10) acres or more.

(8) *Compact development option.* The purpose of the compact development option is to provide flexibility in site design in order to encourage:

- Natural resource preservation.
- Pedestrian-friendly streetscapes.
- Cost-efficiency in providing infrastructure.
- Appropriate design solutions for unique site conditions.

Use of the compact development option is voluntary on the part of applicants.

The compact development option permits smaller lot sizes in return for providing permanent green space within the development, and a more compact, cost-effective network of

streets and utilities. Except for modifications to the lot and building requirements defined below, all other provisions of the R-1 district pertain to the compact development option.

(a) *Lot requirements for compact option.*

1. *Minimum lot size.* Fourteen thousand (14,000) square feet, provided that no less than twenty-five (25) percent of the gross area parent tract is preserved in permanent green space, as defined herein.

2. *Minimum required green space.*

a. *Minimum lot area.* Twenty-five (25) percent of the gross area parent tract. No one (1) lot of such required green space in any compact development shall be less than fourteen thousand (14,000) square feet. Green space may include active or passive recreational uses, and may be held in either public or private ownership. If held in private ownership, the green space shall be held by a homeowner's association or other form of common interest private ownership comparable to a homeowner's association acceptable to the Zoning Administrator. Green space established for purposes of meeting the requirements of this provision shall be restricted from any future development by the establishment of permanent conservation easements held in perpetuity by a public or private entity acceptable to the county. Accessory structures such as picnic shelters, ball fields, ~~and~~ nature trails and other similar recreational amenities shall be permitted within the green space. Parking areas and enclosed buildings are prohibited on the green space.

b. *Maximum length/width ratio.* Five to one (5:1).

c. *Minimum width.* Eighty (80) feet at the setback line of the front yard.

(b) *Building requirements for compact option.* Minimum yards:

1. *Front.* Thirty (30) feet.
2. *Side.* Fifteen (15) feet for each principal structure.
3. *Rear.* Thirty (30) feet or more.
4. *Accessory buildings.* No less than ten (10) feet to side.

Sec. 10-25. R-2 Residential District.

- (1) *Purpose.* The R-2 Residential District is intended to accommodate moderate density, suburban residential uses to be served by public water and sewer facilities. It includes areas currently zoned R-2 and planned for urban or rural expansion in the comprehensive plan. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage, insofar as compatible with the intensity of land use, a suitable environment for family life and to permit certain limited commercial and institutional uses of a scale and character that will not create concentrations of traffic, crowds of customers, general outdoor advertising or other conflicts with the neighboring residential uses.

To these ends, retail activity is sharply limited, and this district is protected against encroachment of general commercial or industrial uses. Residential uses are limited to single-family and two-family structures. Although this district is basically residential in character, certain compatible public and semipublic uses are permitted in the district.

- (2) *Qualifying lands.* Lands qualifying for inclusion in the R-2 zoning district shall be R-2 residential on the date of adoption of this chapter and other lands within areas mapped as residential transition, village, village expansion, or urban expansion in the comprehensive plan. The minimum area required to create a district shall be three (3) acres of total contiguous land.

(3) *Uses permitted by right.* The following uses are permitted by right, subject to compliance with all approved plans and permits, development standards and performance standards contained in this chapter, and with all other applicable regulations:

- (a) Bed and breakfast homestay.
- (b) Church.
- (c) Dwelling, single-family.
- (d) Dwelling, two-family.
- (e) Home occupation.
- (f) Library.
- (g) Pet, household.
- (h) Public utility lines, other.
- (i) Public utility lines, water or sewer.
- (j) School.
- (k) Telecommunications tower, attached.

(4)(i) *Uses permissible by special use permit.* The following uses may be permitted by the board of supervisors as special uses, subject to the requirements of this chapter and to all applicable regulations:

- (a) Bed and breakfast inn.
- (b) Cemetery.
- (c) Civic club.
- (d) Country club.
- (e) Day care center.
- (f) Fire, police and rescue stations.
- (g) Funeral home.
- (h) Golf course.
- (i) Home business.
- (j) Nursing home.
- (k) Park, lighted or unlighted.
- (l) Playground, lighted or unlighted.
- (m) Private club.
- (n) Public utility plant, other.
- (o) Public utility plant, water or sewer.

(4)(ii) The following uses may be permitted by the board of zoning appeals as special uses, subject to the requirements of this chapter and all other applicable regulations:

- (a) Accessory structures greater than twelve hundred (1,200) square feet in area and/or eighteen (18) feet in height.

(5) *Lot requirements.*

- (a) *Minimum lot area.* Fifteen thousand (15,000) square feet.
- (b) *Lot access.* Lots shall be accessed from a road in the Virginia Department of Transportation (VDOT) system.
- (c) *Maximum lot coverage.* Building coverage shall not exceed thirty (30) percent of gross site area. Impervious surfaces shall not exceed fifty (50) percent of gross site area.
- (d) *Minimum width.* Ninety (90) feet at the setback line of front yard.
- (e) *Maximum length/width ratio.* Five to one (5:1).

(6) *Building requirements.*

- (a) *Minimum yards.*
 - 1. *Front.* Forty (40) feet (also refer to section 10-41(16) for setbacks from existing intensive agriculture operations).
 - 2. *Side.* Fifteen (15) feet for each principal structure.
 - 3. *Rear.* Forty (40) [feet].

4. *Accessory buildings.* Ten (10) feet to any side or rear lot line.

(b) *Maximum building height.* Buildings may be erected up to thirty-five (35) feet in height from grade, except that:

1. The height limit for dwellings may be increased up to ten (10) feet, provided that there, is one (1) additional foot or more of side yard in each side yard for each additional foot of building height over thirty-five (35) feet.

2. A public or semipublic building such as a school, church, library or hospital may be erected to a height of sixty (60) feet from grade, provided that required front, side and rear yards shall be increased one (1) foot for each foot in height over thirty-five (35) feet.

3. No accessory building which is within ten (10) feet of any party lot line shall be more than one (1) story high. All accessory buildings shall be less than the main building in height.

(7) *Use limitations.*

(a) *Public water and wastewater service.* Public water and wastewater services are required for all development in any R-2 district established after the date of adoption of this chapter.

(b) *Keeping and raising horses and ponies.*

1. Horses and ponies may only be kept for personal enjoyment and not for commercial purposes;

2. A minimum of five (5) acres of open or forestal land is available for the horses and ponies; and

3. No more than two (2) horses and ponies collectively (being one (1) horse and one (1) pony, two (2) horses, or two (2) ponies) shall be permitted per each five (5) acres with a maximum of four (4) horses and ponies collectively for parcels of land of ten (10) acres or more.

(8) *Compact development option.* The purpose of the compact development option is to provide flexibility in site design in order to encourage:

- Natural resource preservation.
- Pedestrian-friendly streetscapes.
- Cost-efficiency in providing infrastructure.
- Appropriate design solutions for unique site conditions.

Use of the compact development option is voluntary on the part of applicants.

The compact development option permits smaller lot sizes in return for providing permanent green space within the development, and a more compact, cost-effective network of streets and utilities. Except for modifications to the lot and building requirements defined below, all other provisions of the R-2 district pertain to the compact development option.

(a) *Lot requirements for compact option.*

1. *Minimum lot size.* Eleven thousand (11,000) square feet, provided that no less than twenty-five (25) percent of the gross area parent tract is preserved in permanent green space, as defined herein.

2. *Minimum required green space.*

a. Minimum lot area. Twenty-five (25) percent of the gross area parent tract. No one (1) lot of such required green space in any compact development shall be less than fourteen thousand (14,000) square feet. Green space may include active or passive recreational uses, and may be held in either public or private ownership. If held in private ownership, the

green space should be held by a homeowner's association or other form of common interest private ownership comparable to a homeowner's association acceptable to the Zoning Administration. Green space established for purposes of meeting the requirements of this provision shall be restricted from any future development by the establishment of permanent conservation easements held in perpetuity by a public or private entity acceptable to the county. Accessory structures such as picnic shelters, ball fields, ~~and~~ nature trails and other similar recreational amenities shall be permitted within the green space. Parking areas and enclosed buildings are prohibited on the green space.

b. Maximum length/width ratio. Five to one (5:1).

c. Minimum width. Seventy (70) feet at the setback line of front yard.

(b) *Building requirements for compact option.* Minimum yards:

1. *Front.* Thirty (30) feet.
2. *Side.* Fifteen (15) feet for each principal structure.
3. *Rear.* Thirty (30) feet.
4. *Accessory buildings.* No less than ten (10) feet to side or rear lot line.

Sec. 10-26. R-3 Residential District.

- (1) *Purpose.* The R-3 Residential District is intended to accommodate moderate density suburban residential uses to be served by public water and sewer facilities. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage, insofar as compatible with the intensity of land use, a suitable environment for family life, and to permit certain compatible commercial uses of a character unlikely to develop general concentration of traffic, crowds of customers and general outdoor advertising.

To these ends, retail activity is sharply limited and this district is protected against encroachment of general commercial or industrial uses. Although this district is basically residential in character, certain compatible public and semipublic uses are permitted in the district.

- (2) *Qualifying lands.* Lands qualifying for inclusion in the R-3 zoning district shall be R-3 Residential on the date of adoption of this chapter and other lands within areas mapped as residential transition, village, village expansion, or urban expansion in the comprehensive plan. The minimum area required to create a district shall be two (2) acres of total contiguous land.

- (3) *Uses permitted by right.* The following uses are permitted by right in the R-3 district, subject to compliance with all approved plans and permits, development standards and performance standards contained in this chapter, and with all other applicable regulations:

- (a) Church.
- (b) Dwelling, single-family.
- (c) Dwelling, two-family.
- (d) Home occupation.
- (e) Library.
- (f) Pet, household.
- (g) Public utility lines, other.
- (h) Public utility lines, water or sewer.
- (i) School.
- (j) Telecommunications tower, attached.

- (4)(i) *Uses permissible by special use permit.* The following uses may be permitted by the board of supervisors as special uses, subject to the requirements of this chapter and to all other applicable regulations:

- (a) Bed and breakfast homestay.
- (b) Cemetery.
- (c) Civic club.
- (d) Country club.
- (e) Day care center.
- (f) Fire, police and rescue stations.
- (g) Funeral home.
- (h) Golf course.
- (i) Home business.
- (j) Manufactured home, Class A and Class B.
- (k) Medical care facility.
- (l) Nursing home.
- (m) Park, lighted or unlighted.
- (n) Playground, lighted or unlighted.
- (o) Public utility plant, other.
- (p) Public utility substations.

(4)(ii) The following uses may be permitted by the board of zoning appeals as special uses, subject to the requirements of this chapter and all other applicable regulations:

- (a) Accessory structures greater than twelve hundred (1,200) square feet in area and/or eighteen (18) feet in height.

(5) *Lot requirements.*

- (a) *Minimum lot area* (also refer to "lot coverage"). Ten thousand (10,000) square feet.
- (b) *Lot access.* Lots shall be accessed from a road in the Virginia Department of Transportation (VDOT) system.
- (c) *Maximum lot coverage.* Lot coverage shall not exceed thirty (30) percent of gross site area. Impervious surfaces shall not exceed fifty (50) percent of gross site area.
- (d) *Minimum width.* Eighty (80) feet at the setback line of front yard.
- (e) *Maximum length/width ratio.* Five to one (5:1) for any lot less than two (2) acres.

(6) *Building requirements.*

- (a) *Minimum yards.*
 - 1. *Front.* Twenty-five (25) feet (also refer to section 10-41(16) for setbacks from existing intensive agriculture operations).
 - 2. *Side.* Ten (10) feet for each principal structure.
 - 3. *Rear.* Twenty-five (25) feet.
 - 4. *Accessory buildings.* Ten (10) feet to any side or rear lot line.
- (b) *Maximum building height.* Up to thirty-five (35) feet in height from grade, except that:
 - 1. The height limit for dwellings may be increased up to ten (10) feet, provided that there are two (2) side yards for each permitted use, each of which is fifteen (15) feet or more, plus one (1) foot or more of side yard for each additional foot of building height over thirty-five (35) feet.
 - 2. A public or semipublic building such as a school, church, library or hospital may be erected to a height of sixty (60) feet from grade, provided that required front, side and rear yards shall be increased one (1) foot for each foot in height over thirty-five (35) feet.
 - 3. No accessory building which is within ten (10) feet of any party lot line shall be more than one (1) story high. All accessory buildings shall be less than the main building in height.

(7) *Use limitations.*

(a) *Public water and wastewater service.* Public water and wastewater services are required for all development in any R-3 district established after the date of adoption of this chapter.

(b) *Keeping and raising horses and ponies.*

1. Horses and ponies may only be kept for personal enjoyment and not for commercial purposes;

2. A minimum of five (5) acres of open or forestal land is available for the horses and ponies; and

3. No more than two (2) horses and ponies collectively (being one (1) horse and one (1) pony, two (2) horses, or two (2) ponies) shall be permitted per each five (5) acres with a maximum of four (4) horses and ponies collectively for parcels of land of ten (10) acres or more.

(8) *Compact development option.* The purpose of the compact development option is to provide flexibility in site design in order to encourage:

- Natural resource preservation.
- Pedestrian-friendly streetscapes.
- Cost-efficiency in providing infrastructure.
- Appropriate design solutions for unique site conditions.

Use of the compact development option is voluntary on the part of applicants.

The compact development option permits smaller lot sizes in return for providing permanent green space within the development, and a more compact, cost-effective network of streets and utilities. Except for modifications to the lot and building requirements defined below, all other provisions of the R-3 district pertain to the compact development option.

(a) *Lot requirements for compact option.*

1. *Minimum lot size.* Seven thousand (7,000) square feet, provided that no less than twenty-five (25) percent of the gross area parent tract is preserved in permanent green space, as defined herein.

2. *Minimum required green space.*

a. Minimum lot area. Twenty-five (25) percent of the gross area parent tract. No one (1) lot of such required green space in any compact development shall be less than seven thousand (7,000) square feet. Green space may include active or passive recreational uses, and may be held in either public or private ownership. If held in private ownership the green space shall be held by a homeowner's association or other form of common interest private ownership comparable to a homeowner's association acceptable to the Zoning Administrator. Green space established for purposes of meeting the requirements of this provision shall be restricted from any future development by the establishment of permanent conservation easements held in perpetuity by a public or private entity acceptable to the county. Accessory structures such as picnic shelters, ball fields, ~~and~~ nature trails and other similar recreational amenities shall be permitted within the green space. Parking areas and enclosed buildings are prohibited on the green space.

b. Maximum length/width ratio. No one (1) lot of such required green space in any compact development shall have a length to width ratio greater than five to one (5:1).

c. Minimum width. Sixty (60) feet at the setback line of front yard.

(b) *Building requirements for compact option.* Minimum yards:

1. *Front.* Twenty (20) feet.
2. *Side.* Ten (10) feet for each principal structure.
3. *Rear.* Twenty-five (25) feet or more.
4. *Accessory buildings.* No less than five (5) feet to side or rear lot line.

The vote on the foregoing ordinance was as follows:

<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Mary W. Biggs	None	Gary D. Creed
John A. Muffo		Annette S. Perkins
James D. Politis		
Doug Marrs		
Steve L. Spradlin		

ORD-FY-08-09

AN ORDINANCE AMENDING CHAPTER 10 ENTITLED ZONING SECTION 10-21 OF THE CODE OF THE COUNTY OF MONTGOMERY VIRGINIA BY INCREASING THE AMOUNT OF ALLOWABLE IMPERVIOUS SURFACE IN THE A-1 AGRICULTURAL DISTRICT

On a motion by Mary W. Biggs, seconded by James D. Politis and carried unanimously,

BE IT ORDAINED, By the Board of Supervisors of the County of Montgomery, Virginia, that Chapter 10, entitled Zoning, Section 10-21, of the Code of the County of Montgomery, Virginia, shall be amended and reordained as follows:

Sec.10-21. A-1 Agricultural District.

(1) *Purpose.* The A-1 Agricultural District is intended to preserve and enhance the rural, low density character and natural resources of the rural portions of the county where agriculture, forest and open space uses predominate, as well as to accommodate limited amounts of low density residential development that is generally not served by public water or wastewater systems.

This district is generally intended to apply to lands designated in the comprehensive plan as rural or resource stewardship areas. Land in this district is generally not intended to be served with public water or wastewater or to be in proximity to other public services.

(2) *Qualifying lands.* Lands qualifying for inclusion in the A-1 zoning district shall be those within the current A-1 district on the date of adoption of this chapter and other lands within areas mapped as rural or resource stewardship in the comprehensive plan. Qualifying lands shall generally not include those served or planned to be served by public water or sewer service. The minimum area required to create a district shall be ten (10) acres of total contiguous land.

(3) *Uses permitted by right.* The following uses are permitted by right, subject to compliance with all approved plans and permits, development and performance standards contained in this chapter, and all other applicable regulations:

- (a) Agriculture.
- (b) Agriculture, intensive.
- (c) Agriculture, small scale.
- (d) Bed and breakfast homestay.
- (e) Cemetery.
- (f) Church.
- (g) Dwelling, single-family.

- (h) Farm enterprise.
- (i) Fire, police and rescue stations.
- (j) Home occupation.
- (k) Manufactured (mobile) home, Class A or B.
- (l) Natural area.
- (m) Park, unlighted.
- (n) Pet, farm.
- (o) Pet, household.
- (p) Playground, unlighted.
- (q) Public utility lines, other; and public utility lines, water and sewer.
- (r) Sawmill, temporary.
- (s) School.
- (t) Telecommunications tower, attached.
- (u) Veterinary practice, animal hospital.

(4)(i) *Uses permissible by special use permit.* The following uses may be permitted by the board of supervisors as special uses, subject to the requirements of this chapter and all other applicable regulations:

- (a) Bed and breakfast inn.
- (b) Campground.
- (c) Camp, boarding.
- (d) Civic club.
- (e) Contractor's storage yard.
- (f) Country club.
- (g) Country inn.
- (h) Custom meat cutting, processing and packaging.
- (i) Day care center.
- (j) Disposal facility, landfill.
- (k) Exploratory activities associated with extractive industries.
- (l) Extractive industries and accessory uses including, but not limited to, the mining of minerals and the operation of oil and gas wells.
- (m) Game preserve.
- (n) Garden center.
- (o) General store or specialty shop, provided gross floor area is two thousand (2,000) square feet or less.
- (p) Golf course.
- (q) Golf driving range.
- (r) Grain mill, feed mill.
- (s) Home business.
- (t) Junkyard, automobile graveyard.
- (u) Kennel, commercial (refer to use limitations in subsection 7).
- (v) Landfill (see Disposal facility).
- (w) Livestock market.
- (x) Park, lighted.
- (y) Playground, lighted.
- (z) Public utility plant, other.
- (aa) Public utility substations.
- (bb) Public utility plant water or sewer (not including distribution or collection lines).
- (cc) Recreational vehicle park.
- (dd) Recycling collection points.
- (ee) Repair shop, automotive (refer to use limitations in subsection 7).
- (ff) Restaurant, provided gross floor area is two thousand (2,000) square feet or less.
- (gg) Rural resort.
- (hh) Sawmill.
- (ii) Shooting range (as principal use or accessory to a gun shop). (Refer to use limitations in subsection 7).
- (jj) Slaughterhouse.
- (kk) Solid waste collection point.
- (ll) Stable, commercial.

- (mm) Structures, nonresidential, totaling in excess of twenty thousand (20,000) gross square feet.
- (nn) Structures over forty (40) feet in height.
- (oo) Telecommunications tower, freestanding.
- (pp) Flea market (also subject to requirements of article VI of the County Code).
- (qq) ~~Impervious lot coverage greater than twenty (20) percent but less than twenty-five (25) percent.~~
- ~~(rr)~~ Stone engraving and sales.

(4)(ii) *[Special uses.]* The following uses may be permitted by the board of zoning appeals as special uses, subject to the requirements of this chapter and all other applicable regulations:

- (a) Accessory structures greater than one thousand two hundred (1,200) square feet in area and/or eighteen (18) feet in height.
- (b) Farm enterprise with less than forty (40) feet of public road frontage subject to the requirements of section 10-41(18)(g) of this Zoning Ordinance.

(5) *Lot requirements.*

- (a) *Minimum lot area.* One (1.0) acre.
- (b) *Density.* In addition to the minimum required lot area defined above, the maximum gross density (total number of lots per parent parcel after subdividing) for residential development in the A-1 district shall be in accord with the following sliding scale:

TABLE INSET:

Parent Parcel Area	Total Lots Permitted on Parent Parcel
Less than 1.0 acre	0 lots
Less than 2.0 acres	1 lot
Less than 3.0 acres	2 lots
3.0 to 10.0 acres	Up to 3 lots
More than 10.0 acres up to 30.0 acres	Up to 4 lots
More than 30.0 acres up to 50.0 acres	Up to 5 lots
More than 50.0 acres up to 70.0 acres	Up to 6 lots
More than 70.0 acres up to 90.0 acres	Up to 7 lots
More than 90.0 acres up to 110.0 acres	Up to 8 lots
More than 110.0 acres up to 130.0 acres	Up to 9 lots
More than 130.0 acres	One (1) additional lot for every 20 acres over 130 acres

All lots in the A-1 district are subject to the above sliding scale and all applicable regulations for on-site water supply and wastewater treatment, which may limit the number of lots permitted; except for green space (open space) lots and conservation easements, public utility, telecommunications towers or public water or sewer installation lots or similar which are not for habitation and which may be a minimum of ten thousand (10,000) square feet. Moreover, the board of supervisors may authorize the issuance of a special use permit for more lots than the total permitted by the sliding scale in situations where a family subdivision conflicts with the sliding scale.

(c) *Clustering of permitted lots between parent parcels.* A landowner with several contiguous parent parcels may cluster the number of permitted lots from any one parent parcel to any other contiguous parent parcel provided the landowner merges the two (2) contiguous parent parcels into one (1) parcel by vacating the boundary line and all other lot requirements under this subsection (5) are met.

(d) *Lot access.* Lots shall be accessed from a road in the Virginia Department of Transportation (VDOT) system or from a hard-surfaced private street designed by a professional engineer to meet current VDOT subdivision street requirements with one exception. Under the exception, one lot divided from any parent parcel may be served by a private access easement at least forty (40) feet in width.

(e) *Maximum coverage.* No more than twenty (20) percent of any lot shall be covered by buildings or other impervious surfaces unless approved by special use permit but shall not exceed twenty-five (25) percent and no more than thirty (30) percent of any lot shall be covered by impervious surfaces.

(f) *Minimum width.* One hundred twenty (120) feet at the minimum setback line of the front yard. Frontage requirements for family subdivisions and public utility or public water or sewer installation lots shall be in accord with the Montgomery County Subdivision Ordinance.

(g) *Maximum length/width ratio.* Five to one (5:1) for any lot less than twenty (20) acres in area.

(6) *Building requirements.*

(a) *Minimum yards:*

1. *Front.* Forty (40) feet (also refer to additional setback requirements pertaining to residential uses near intensive agricultural operations, section 10-41(16)).
2. *Side.* Fifteen (15) feet for each principal structure.
3. *Rear.* Forty (40) feet.
4. *Accessory buildings.* No accessory building may be located closer than ten (10) feet to a side or rear lot line.

(b) *Maximum building height.* No building or structure, except for exempted structures provided for in section 10-2(5)(b) of this chapter, shall exceed forty (40) feet in height, as defined, except by special use permit and that for every one (1) foot above forty (40) feet, the building or structure shall be set back an additional two (2) feet up to a maximum of one hundred (100) feet.

(7) *Use limitations.*

(a) *Repair shop, automotive.* All work must be conducted within a completely enclosed building no larger than one thousand two hundred (1,200) square feet in size; and the shop shall be at least three hundred (300) feet from any residential zoning district or existing dwelling, other than the owner's dwelling.

(b) *Kennels.* No principal or accessory use or structure shall be within five hundred (500) feet of an existing dwelling, other than the owner's dwelling, nor within three hundred (300) feet of any adjacent lot.

(c) *Shooting ranges.* Shooting ranges shall not operate between 10:00 p.m. and 7:00 a.m.

The vote on the foregoing ordinance was as follows:

<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
John A. Muffo	None	Gary D. Creed
James D. Politis		Annette S. Perkins
Doug Marrs		
Mary W. Biggs		
Steve L. Spradlin		

ORD-FY-08-10
AN ORDINANCE AMENDING CHAPTER 10 ENTITLED ZONING
SECTIONS 10-52, 10-53, 10-54 AND 10-61 RESPECTIVELY OF
THE CODE OF THE COUNTY OF MONTGOMERY, VIRGINIA
BY REQUIRING THAT ALL REQUESTS FOR ZONING MAP AMENDMENTS,
SPECIAL USE PERMITS AND SITE PLAN APPROVALS THAT SUBSTANTIALLY
AFFECT TRANSPORTATION ON STATE CONTROLLED HIGHWAYS
AS DEFINED BY THE VIRGINIA DEPARTMENT OF TRANSPORTATION
TRAFFIC IMPACT ANALYSIS REGULATIONS
CHAPTER 155 24 VAC 30-155 et seq. TO COMPLY WITH THE VIRGINIA
DEPARTMENT IMPACT ANALYSIS REGULATIONS INCLUDING THE
REQUIREMENTS TO PROVIDE A TRAFFIC IMPACT STATEMENT SHOWING
HOW THE ZONING AMENDMENT, SPECIAL USE PERMIT OR SITE PLAN WILL
RELATE TO EXISTING AND FUTURE TRANSPORTATION FACILITIES

On a motion by Mary W. Biggs, seconded by James D. Politis and carried unanimously,

BE IT ORDAINED, By the Board of Supervisors of the County of Montgomery, Virginia, that Chapter 10, entitled Zoning, Sections 10-52, 10-53, 10-54 and 10-61, respectively of the Code of the County of Montgomery, Virginia, shall be amended and reordained as follows:

Sec. 10-52. Administration, enforcement and public hearings.

(1) *Administration.*

(a) *Zoning administrator.* It shall be the responsibility of the zoning administrator to administer, interpret and enforce the provisions of this chapter. The zoning administrator shall be guided in all of his actions pursuant to this chapter by the terms, purposes, intent and spirit of this chapter. The zoning administrator may be assisted in the enforcement of this chapter by the health officer, sheriff and all other officials of Montgomery County, Virginia, pursuant to their respective fields. Specifically, the duties and powers shall include:

1. To receive and/or review:
 - a. Applications for variances.
 - b. Notices of appeal to the BZA.
 - c. Applications for certificates of occupancy.
 - d. Applications for zoning permits.
 - e. Applications for commission permits.
 - f. All other applications, certifications, or materials required by this chapter to be submitted to the zoning administrator.
2. To issue zoning permits where the requirements of this chapter have been met.
3. To issue interpretations of this chapter upon proper application. Such interpretations shall be binding as to the applicant and as to the specific facts presented in the application for interpretation after the completion of the thirty-day appeal period. In administering this chapter and rendering determinations as to the uses permitted or allowed by special use permit in the various zoning

districts, the zoning administrator shall have the power and authority to render decisions as to whether a specific proposed use, although not listed as permitted or allowed by special use permit, is so substantially similar in substance and effect to a permitted use or a use allowed by special use permit, that it should be allowed as if expressly permitted or allowed by special use permit. Such interpretations shall include notification of appeal procedures and timelines.

4. To conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of this chapter.

5. To maintain accurate records of proffered conditions as required by section 10-54(1)(i) of this chapter.

6. To enforce the provisions of this chapter, the decisions of the BZA and conditions and proffers subject to which approvals of the BZA, planning commission and board of supervisors were made.

7. To perform such other duties and functions as may be required by this chapter and the board of supervisors.

8. To maintain and make available for public inspection and copying the official zoning map, the zoning ordinance, and the minimum submission requirements adopted by board of supervisors resolution.

9. To maintain a compilation of the interpretations and opinions of the zoning administrator for public review.

(b) *Fees.* The county administrator shall recommend and the board of supervisors shall adopt a schedule of fees to be paid upon the filing of each application specified in this chapter. Application fees are hereby waived for the following:

1. Applications for requested amendment from any district to a C-1 district.

2. Applications for amendment, special use permit, or commission permit sought by the following governmental agencies:

- a. Montgomery County School Board.
- b. Public Service Authority (PSA).
- c. Fire and rescue companies serving Montgomery County.
- d. Any agency, board or division acting in the name of the Board of Supervisors of Montgomery County.

(c) *Submission requirements.* The board of supervisors shall adopt by resolution regulations enumerating those materials required to be included with each application provided for in this chapter, which materials shall constitute the minimum submission requirements for such application and be consistent with the requirements of this chapter. Such submission requirements shall include a letter signed by the applicant and by the owner of the property granting the right of entry upon the property to the zoning administrator, law enforcement agents, and county inspectors for the purpose of inspecting, and bringing law enforcement to the property, during the term of any permit which may be issued. In addition to the materials requested by the Board of Supervisors by Resolution the submission requirements shall include in the case of any application for a zoning map amendment, zoning concept development plan amendment, special use permit or site plan, a Traffic Impact Statement when the proposed zoning map amendment, zoning concept development plan amendment, special use permit or site plan substantially affects transportation on State controlled highways as defined by the Virginia Department of Transportation Traffic Impact Analysis Regulations Chapter 155, 24 VAC 30-155, et seq. The data and analysis contained in the Traffic Impact Statement shall be acceptable to VDOT and comply with VDOT Traffic Impact Analysis Regulations 24 VAC 30-155-60 and this Ordinance. The applicant shall submit three (3) copies of the Traffic Impact Statement. The Zoning Administrator shall forward the Traffic Impact Statement to VDOT within ten (10) business days of receipt of a complete

application. Such submission requirements shall also include, in the case of any application for a zoning map amendment, zoning ordinance modification, zoning concept development plan amendment, special use permit, variance, site plan or zoning permit, the provision of satisfactory evidence from the treasurer's office that any real estate taxes due and owed to the county which have been properly assessed against the property have been paid and that the property shall be in compliance with all county ordinances upon submission of such application. Revisions to the list of those materials required necessitated by an amendment to this chapter shall be attached to such amendment for concurrent consideration and adoption by resolution of the board of supervisors. If the application is a reclassification to a non-planned unit development district, a rezoning plat shall be required.

(d) *Inactive applications.* Any zoning map amendment application, zoning modification application, or concept development plan amendment application officially accepted by the county for processing but which has had processing suspended either by request of the applicant or by having no contact or activity occur in regards to the application by the applicant for a period of twelve (12) months or any special use permit application officially accepted by the county for processing but which has had such processing suspended either by request of the applicant or by having no contact or activity occur in regards to the application by the applicant for a period of six (6) months shall be deemed inactive. An application may remain inactive for up to three (3) years at the end of which period it will be processed to a final decision. If an applicant wishes to reactivate their application prior to the end of this three-year period, the applicant must notify the county in writing of intent to proceed with the application, grant the county an appropriate timeline extension and pay a reactivation fee as established by the board of supervisors.

(2) *Enforcement and penalties.*

(a) *Zoning administrator.* The zoning administrator shall have the authority and the duty to ensure that all buildings and structures and the use of all land complies with the provisions of this chapter.

(b) *General provisions.*

1. Any building or structure erected contrary to any of the provisions of this chapter and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this chapter or the provisions of any approval granted by the county under this chapter shall be a violation of this chapter and the same is hereby declared to be unlawful.
2. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this chapter, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of the provisions of this chapter or the provisions of any approval granted by the county under this chapter shall be subject to the enforcement provisions of this section.
3. In addition to the remedies provided in this section, the zoning administrator may initiate injunction, mandamus, abatement or any other appropriate action to prevent, enjoin, abate or remove any unlawful building, structure or use.
4. Upon becoming aware of any violation, the zoning administrator shall serve notice of such violation on the person committing or permitting the same, and the land owner. The administrator shall, in the notice of violation, state the nature of the violation, the date that it was observed, and the remedy or remedies necessary to correct the violation. The administrator may establish a reasonable time period for the correction of the violation, however in no case shall such time period exceed thirty (30) days from the date of written notification, except that the administrator may allow a longer time period to correct the violation if the correction would require the structural alteration of a building or structure. If the violation is not corrected within the time period specified in the first notification, a second written notice shall be sent. The second notification shall request

compliance with these provisions within a period not to exceed seven (7) days. If such violation has not ceased within such reasonable time as the zoning administrator has specified in such notice the zoning administrator shall institute such action as may be necessary to terminate the violation.

5. If the person responsible for the alleged violation denies that a violation exists, the person may appeal the decision of the zoning administrator pursuant to the provisions of section 10-55 of this article.

6. Whenever a violation occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the cause and basis thereof shall be filed with the zoning administrator. The zoning administrator shall record such complaint, investigate, and take action thereon as provided by this chapter.

(c) *Criminal violations.*

1. Any violation of the provisions of this chapter shall be deemed a Class 2 criminal misdemeanor and, upon conviction thereof, shall be punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00) for each separate offense. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with this ordinance, within a time period established by the court. Failure to remove or abate the zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) or more than one thousand dollars (\$1,000.00) and any such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for each ten-day period punishable by a fine not less than one hundred dollars (\$100.00) nor more than one thousand five hundred dollars (\$1,500.00). Nothing herein contained shall prevent the county from taking such other lawful action as is necessary to prevent or remedy any violation, including without limitation, pursuing injunctive relief. Each day during which the violation is found to have existed shall constitute a separate offense.

2. The designation of a particular violation of this chapter as a civil violation shall preclude criminal prosecution of sanctions, except when such violation results in injury to any person.

(d) *Civil violations.*

1. Any violation of the provisions shall be deemed a civil violation and, upon an admission of liability, shall be punishable by a fine of one hundred dollars (\$100.00) for each individual charge. The civil penalties set forth herein shall be in lieu of criminal penalties. Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall specified violations arising from the same operative set of facts be charged more frequently than once in any ten-day period, and in no event shall a series of specified civil violations rising from the same operative set of facts result in civil penalties which exceed a total of three thousand dollars (\$3,000.00). Nothing in this subsection shall be construed as to prohibit the zoning administrator from initiating civil injunction procedures in cases of repeat offenses.

2. After having served a notice of violation on any person committing or permitting a violation of the zoning ordinance provisions and if such violation has not ceased within such reasonable time as is specified in such notice, the zoning administrator shall cause two (2) copies of a summons to be personally served upon such person. If a person complies in writing to a notice of violation, and agrees to cease said violation, no further fines shall be levied after the date of such agreement, provided such agreement is complied with.

3. The summons shall provide that any person summoned for a violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the county treasurer's office at least seventy-two (72) hours prior to the

time and date fixed for trial and, by such appearance, may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such summons shall provide that a signature to an admission of liability shall have the same force and effect as a judgment of court, however, an admission shall not be deemed a criminal conviction for any purpose.

4. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.

5. Reserved.

(3) *Public hearings, notice required.* Each public hearing involving planning and zoning matters before the planning commission, the board of supervisors and the board of zoning appeals, requires notice as set forth in section 15.2-2204 of the Virginia Code and below.

(a) *Written notice.*

1. *Contents.* All required written notices shall contain:

- a. The time, date and place of hearing.
- b. A brief description of the matter being heard.
- c. Identification of the land subject of the application including the tax map number of the property and complete street address of the property.

2. *Second notice remailed if hearing continued.* If a public hearing is continued, or if a planning and zoning matter is deferred or tabled by the board of supervisors for a period more than ninety (90) days after the board's public hearing, then the second notice required in such case shall be remailed.

3. *Notice by county.* Notwithstanding any other provision of this section, whenever the notices required under this section are sent on behalf of an agency, department or division of the county, such notice shall be sent by the zoning administrator and may be sent by first class mail; however, the zoning administrator shall make affidavit that such mailings have been made and file such affidavit with the papers in the case.

4. *Certification.* At least five (5) calendar days prior to the hearing, an affidavit, prepared by the person or persons, or their representative providing notice, shall be filed with the director of planning certifying that first and second notices have been sent and such affidavit shall include a list of names of those to whom notice was sent. A counterpart of such affidavit shall be presented at the beginning of the public hearing on the application.

5. *Failure to receive notice.* Failure to receive any notice of a hearing required by this section, in and of itself, shall not invalidate any action taken at or subsequent to the hearing.

6. *Condominium ownership.* In the case of a condominium, written notice may be sent to the unit owner's association instead of to each individual unit owner.

(b) *Placard notice.* Each application shall be posted by the applicant, using a form of placard provided by the zoning administrator, at least fourteen (14) and no more than thirty (30) calendar days prior to each public hearing. County-initiated amendments involving more than ten (10) parcels shall be exempt from placard requirements.

1. *Location of placards.* Placards shall be affixed to a pole, post, fence or other structure to be clearly visible from each public road abutting the property. If no public roads abut the property, then the placard shall be posted so as to be clearly visible from at least two (2) abutting properties and at the access points to said property.

2. *Maintenance and removal of placards.* The applicant shall maintain all placards up to the time of the hearing and shall remove all posted placards no later than fifteen (15) calendar days after the public hearing has been closed. Public hearing(s) may proceed even if placards are missing, damaged or vandalized.

3. *Penalties.* It shall be unlawful for any person to destroy, deface or remove such placard notice. Any person taking such action shall be subject to the penalties set forth in subsection (2)(c) of this section.

(c) *Newspaper notice.* The county shall give newspaper notice prior to each public hearing in accord with section 15.2-2204A of the Virginia Code.

1. *Contents of newspaper notice.* The notice shall contain:

- a. The time, date and place of the hearing;
- b. A brief description of the matter being heard;
- c. If the matter is one for which an additional public hearing is necessary and has been scheduled before the BZA or board of supervisors, the time, date and place of the scheduled BZA or board of supervisors hearing; and
- d. Identification of the land that is the subject of the application including the tax map number and complete address of the property.
- e. In the case of a zoning map amendment, including an amendment to an approved concept development plan, or a modification of ordinance regulations, the general usage and density range of the proposed zoning amendment, and the general usage and density range, if any, set forth in the comprehensive plan shall be included within the notice.

(d) *Notice requirements for particular hearings.* The following particular hearings require the following form of notice:

1. *Appeals to board of supervisors.* Public hearings on appeals to the board of supervisors require that the county provide newspaper notice of the hearing.
2. *Appeals to board of zoning appeals.* Public hearings on appeals to the BZA require that the county provide newspaper notice of the hearing.

(e) *Additional notice required.*

1. *Deferral.* If an item is not heard at the time for which it was noticed but is deferred at that time to another date, all notice required by this section shall be given of the deferred public hearing.
2. *Recessed public hearings.* If a public hearing is begun but the agenda not completed, thereby requiring the meeting to be recessed, no additional notice is required as long as the dates for completion of the public hearing agenda is announced at the hearing which has been recessed.

(f) *Speakers at public hearings.* All witnesses and speakers presenting facts and evidence at any public hearing shall provide their name, address and affiliation, if any, for the record. At the discretion of the person presiding over the hearing, witnesses or speakers may be required to give oath or affirmation regarding the truth of their statements.

Sec. 10-53. Required development approvals.

(1) *Zoning permits.*

(a) *Permits.* No building permit or certificate of occupancy shall be issued, [no] building or structure shall be erected or occupied, no use, or change in use commenced, and no excavation or grading commenced relating thereto unless a zoning permit therefore has been issued by the zoning administrator and is still valid; except that a

conditional grading permit may be obtained prior to construction plans and profiles or site plan approval in accord with the prevailing adopted standards in applicable county ordinances including this chapter and the subdivision ordinance.

(b) *Application for zoning permit.* An application for a zoning permit, signed by the property owner, shall be filed with the zoning administrator and shall be accompanied by as much of the following information as the zoning administrator deems pertinent and such additional information as the zoning administrator may require to determine whether the proposed use or structure will be in compliance with the provisions of this chapter.

1. Certificate from the health official that the proposed location complies with relevant chapters of the codified ordinances and/or applicable state laws regarding sewage disposal and/or water supply or, where a public water and/or sewerage system approved by a health official is involved, a statement from the system permittee that all applicable regulations and requirements have been complied with.
2. A grading permit, if required by state law or county ordinance.
3. The intended use.
4. If a dwelling, the number of families.
5. An approved site plan or a plot plan drawing signed by the applicant drawn to scale showing dimensions of any structures and their location with respect to property lines and public roads.
6. A location clearance for property located in the floodplain or airport safety overlay districts.
7. Number, size, location and lighting of signs, if any.
8. Number, size, and location of off-street parking lots or spaces.

(c) *Standards for issuance.* No zoning permit shall be issued where the structure to be constructed or the use contemplated would be in violation of the provisions of this chapter or any other applicable county law, ordinance or regulation. In addition, no permit shall be issued if the proposed use violates the terms of approval of a rezoning, subdivision, special use permit, proffer, variance, or other approval. The issuance of such zoning permit, however, shall not afford protection to any owner who is found to be violating this or any other applicable law, ordinance or regulation.

(d) *Duration of valid zoning permit.* Any zoning permit issued shall become invalid if the authorized work is not commenced within six (6) months of the date of issuance, or is suspended or abandoned for a continuous period of six (6) months. The zoning administrator may, upon good cause shown, extend a permit with or without charge for an additional period not exceeding six (6) months.

(2) *Occupancy permits.* Land may be used or occupied and buildings structurally altered or erected may be used or changed in use only after a certificate of occupancy has been issued by the administrator. Such a permit shall state that the building or the proposed use, or the use of the land complies with the provisions of this chapter. A similar certificate shall be issued for the purpose of maintaining, renewing, changing or extending a nonconforming use. A certificate of occupancy either for the whole or a part of a building, shall be applied for simultaneously with the application for a zoning permit. The permit shall be issued within ten (10) days after the erection or structural alteration or such building or part has conformed with the provisions of this chapter.

(3) *Site plan review.*

(a) *Requirements.* A site development plan is required for the following:

1. New construction or development in any zoning district, except for farm structures, single- or two-family dwellings, or accessory buildings for single- or two-family dwellings.
2. The conversion of any farm building or single-family or two-family dwelling unit to any other use, or a higher intensity residential use, or the conversion of any building or property to a different use category, (e.g., commercial to industrial).
3. Any development in which any required off-street parking space is to be used by more than one establishment.
4. When an alteration or amendment is proposed to the site improvements or design of a previously approved site plan.
5. All other uses involving a building required to be reviewed by the planning commission under section 15.2-2232 of the Code of Virginia, as amended.
6. Additions or modifications to any buildings or uses, except for farm structures, single- or two-family dwellings, or accessory buildings for single- or two-family dwellings.

(b) *[Site development plans.]* Site development plans shall be prepared by a professional engineer, architect, landscape architect or land surveyor licensed to practice in the Commonwealth of Virginia. This requirement may be waived by the zoning administrator for minor projects with limited impact on adjacent properties.

(c) *Contents.* Information, format and accompanying materials required for site plans shall be detailed on the site plan checklist to be prepared and maintained by the zoning administrator with advice from the planning commission, planning director and other staff designated by the county administrator. In all cases and applications, sufficient information will be provided for review and approving officials to determine compliance with all zoning regulations of Montgomery County. The number of copies of the plan to be submitted shall be determined by the zoning administrator.

(d) *Review and approval.*

1. Plans submitted for review must be accompanied by payment of the plan review fee. Plan review fees shall be established by resolution of the board of supervisors.
2. The zoning administrator shall coordinate the county review of any site development plan submitted in accord with county administrative procedures, and shall have the authority to request opinions or decisions from other county departments, agencies or authorities of the Commonwealth of Virginia, or from other persons as may from time to time be consulted.
3. No building or zoning permit shall be issued by any county official for any building, structure or use depicted on a requested site development plan, until such time as the plan is approved by the county.
4. Site plans shall be acted upon within a time limit of sixty (60) days from filing or as otherwise allowed in section 15.2-2259 of the Code of Virginia, whichever is less. In the event that approval of a feature or features of a site plan by a State agency is necessary requirements for review including time limitations shall be in accordance with the provisions of Section 15.2-2222.1 of the Code of Virginia, as amended.

5. Approval of a site development plan pursuant to the provisions of this chapter shall be valid in accordance with section 15.2-2261 of the Code of Virginia, as amended.

6. The construction of infrastructure improvements, amenities and safeguards may be assured by bonding and/or letters of credit using procedures and guarantees in the Montgomery County Land Subdivision Ordinance, as determined by the zoning administrator.

7. No change of an approved site development plan is permitted, unless a revised plan or a plan amendment is approved by the zoning administrator.

8. Site plans deemed to substantially affect transportation on State controlled highways as defined by the Virginia Department of Transportation Traffic Impact Analysis Regulations Chapter 155, 24 VAC 30-155 et seq., shall be accompanied by a Traffic Impact Statement when submitted for review.

(4) *Additional county, state and federal approvals required for development.* Approvals obtained pursuant to this chapter shall not relieve any person from the requirement to obtain any other necessary approvals under federal, state or local law.

(5) *Subdivision approval.* Subdivision approval is required in the circumstances specified in the land subdivision ordinance.

(6) *Commission permit.*

(a) *Permit required.*

1. No street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than a railroad facility, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character and extent thereof has been submitted to and approved by the planning commission as being substantially in accord with the adopted comprehensive plan.

2. Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval unless involving a change in location or extent of a street or public area.

3. Any public area, facility or use which requires a permit under 1. above which is identified within, but is not the entire subject of, an application for approval of subdivision or site plan or both may be deemed to be a feature already shown on the comprehensive plan if the county has defined standards governing the construction, establishment or authorization of such public area, facility or use or has approved it through acceptance of a proffer made pursuant to section 10-54(1)(i). In such case, application for a commission permit is not necessary.

4. Application for a commission permit is not necessary in such instances where the public area, facility or use is deemed to be a feature already shown on the comprehensive plan.

(b) *Application.* An application for a commission permit shall be filed with the zoning administrator and shall meet the minimum submission requirements prescribed pursuant to section 10-52(1)(c).

(c) *Planning commission action.*

1. The planning commission shall review the application to determine if the feature for which approval is sought is substantially in accord with the adopted comprehensive plan.
2. The planning commission may hold a public hearing on the matter, with notice provided in accordance with section 10-52(3).
3. The planning commission shall communicate its findings to the board, indicating its approval or disapproval with written reasons therefore.
4. Failure of the planning commission to act within sixty (60) days of acceptance of an application shall be deemed approval, unless such time shall be extended by the board of supervisors. In the event that approval of a feature or features of a site plan by a State agency is necessary requirements for approval including time limitations shall be in accordance with provisions of Section 15.2-2222.1 of the Code of Virginia, as amended.

(d) *Board of supervisors.* Within sixty (60) days after the planning commission has acted or failed to act, the board of supervisors may act on the application by a vote of a majority of the membership thereof.

(e) *Appeal.* Within ten (10) days of the decision of the planning commission, the owner or owners or their agents may appeal the commission's decision to the board of supervisors by filing a written petition with the zoning administrator setting forth the reasons for the appeal. The appeal shall be heard by the board of supervisors and determined within sixty (60) days from its filing.

Sec. 10-54. Special development approvals.

(1) *Zoning amendment.*

(a) *Authority.* The board of supervisors may, by ordinance, amend, supplement, change or repeal the provisions of this chapter or the boundaries of zoning classifications established in the official zoning map.

(b) *Initiation of amendment.* Either a zoning map or text amendment may be proposed by resolution of the board of supervisors or planning commission. In the case of a zoning map amendment, an application may be filed by a person who owns or has a legal interest in or is a duly authorized representative of the owner. In all events, the application must exhibit the consent of all those who have a legal ownership interest in the property under consideration. In the case of a zoning text amendment, a landowner may file a petition for a resolution of intent to amend the ordinance text to be acted upon by the board of supervisors. The board shall either adopt such resolution, initiating the text amendment requested, or deny such petition.

(c) *Review of application.* An application for a zoning map amendment shall be filed, contain such material and be reviewed pursuant to the following:

1. *Pre-application conference.* Prior to filing an application, an applicant may meet with the zoning administrator and discuss the intentions with regard to a given application and questions regarding the procedures or substantive requirements of this chapter. In connection with all such conferences, the director of planning shall be consulted as appropriate. A request for a pre-application conference shall be made to the zoning administrator and shall be accompanied by a sketch map of the site, a description of the proposed project or use, and a list of the issues to be discussed at the conference. No matters discussed at said meeting shall be binding on either the applicant or the county.

2. *Review of application for completeness.* No application shall be accepted and reviewed unless determined by the director of planning to be complete. A complete application is one which meets such minimum submission requirements as may be established pursuant to section 10-52(1)(c), including a rezoning plat and a Traffic Impact Statement if required. Each application shall be reviewed to determine if it includes the minimum submission requirements. The county shall maintain a current log of all pending applications.

3. *Acceptance of complete application.* The planning director shall either accept the application if it is complete and forward to the applicant a notice of acceptance or reject the application if it is incomplete and forward to the applicant a notice of incompleteness specifying those areas of additional information necessary for acceptance and review.

a. If notice of incompleteness is sent, the applicant may resubmit the application with the additional data required, in which event the planning director shall review the resubmitted application in the manner provided in this section for the application.

b. If the application is not resubmitted, the planning director shall notify the applicant that the original application has been rejected as incomplete.

(d) *Staff review of application.*

1. *Referrals.* Upon acceptance of the application for zoning amendment, the planning director shall forward a copy of the application to any town and any county or state agencies whose comments are necessary or desirable for full and appropriate review of the merits of the application. In the event that approval of a feature or features of the application for zoning amendment by a State Agency is necessary, the agent shall forward the zoning amendment application within ten (10) business days of receipt of a completed application to the appropriate State agency or agencies for review. Requirements for review including time limitations shall be in accordance with the provisions of Section 15.2-2222.1 of the Code of Virginia. The application for rezoning shall not be referred to the Planning Commission until the review by the State agency or agencies is complete

2. *Referral responsibilities.* Each reviewing agency shall prepare a staff report which sets out in writing its comments and recommendations regarding the application and shall forward such staff report to the director of planning.

3. *Review of referrals.* Referral comments shall be obtained and reviewed by the director of planning within thirty (30) calendar days after a final application has been accepted. The planning director shall forward to the applicant a written review of the issues raised by the application.

4. *Applicant response.* Upon receipt of the written review, an applicant may request a meeting with the director of planning to discuss the matters contained in the written review and the application generally. Such request shall be in writing and shall include a response to the matters raised in the written review received. If the applicant's response and/or such a meeting results in an amended application, the provisions of subsection (e) herein below shall apply.

5. *Required action by other board.* In the event this chapter requires that an application not be granted until acted upon by some government board or agency other than the planning commission or board of supervisors, then the director of planning shall forward the application for amendment to such board or agency for appropriate action prior to the notification to an applicant that an application is ready to be presented to the board of supervisors or planning commission. If it deems it appropriate, the planning commission may recommend, and the board of supervisors may approve, an application contingent on required action by the other board or boards.

6. *Report and notice to applicant.* The director of planning shall compile the referrals and any other necessary information, prepare a written staff report with proposed findings and a recommendation, and notify the applicant that the report is complete and the application is ready to be presented to the board of supervisors or planning commission, as appropriate, for hearing.

(e) *Amendment to application.* An application may be amended by the submission of additional information or proposed changes to the application after it has been accepted. If the additional information or proposed changes submitted are to conform with recommendations made by county staff, commissions or boards, then it shall not be deemed an amendment and the application shall continue to be processed on its original time line. However, if the additional information or proposed changes submitted by the applicant are at the applicant's request, then the director of planning shall review the information within fifteen (15) calendar days of receipt and render a finding as to whether the submitted information necessitates repeating any portion of the reviewing process including public hearings. If any portion must be repeated, the director will notify the applicant in writing within the fifteen (15) calendar day period that the additional information or proposed changes will require an extension of the time limits prescribed in this section and such notice shall specify the required extension. The applicant will then have fifteen (15) calendar days to provide the director with a written response either granting the necessary extension or withdrawing the additional information or proposed changes which necessitated the extension. If the applicant chooses to withdraw the information, then the application will proceed based on its original timeline.

(f) *Withdrawal of application.* An application may be withdrawn upon written request by the applicant any time prior to the board of supervisors taking final action on the application. In the event of and upon such withdrawal, procession of the application shall cease without further action required by this chapter.

(g) *Limitation on application after denial.* After the official denial of an application by the board of supervisors, substantially the same application concerning any or all of the same property shall not be filed within one (1) year of the date of denial.

(h) *Conditional zoning.* As part of classifying land within the county into areas and districts by legislative action, the county may allow reasonable conditions governing the use of such property, such conditions being in addition to, or modification of, the regulations provided for a particular zone or zoning district by this chapter.

(i) *Proffered conditions.* As part of an application for a rezoning, a property owner may proffer in writing the provision of reasonable conditions to apply and be part of the rezoning sought to be approved by said application. Proffered conditions may include written statements, development plans, profiles, elevations, or other demonstrative materials and shall be subject to the following procedures and regulations:

1. *When proffers are made.*

a. It is the intent of this chapter that any proffered conditions be submitted for staff review as part of an initial application for rezoning. Further, it is the intent of this chapter that revised proffers be publicly available prior to the planning commission public hearing on the application.

b. In no event shall the applicant's proposed statement of proffered conditions be submitted later than the scheduled public hearing before the board of supervisors.

2. *[Approving an application subject to changes.]* Nothing in this paragraph shall prevent the board of supervisors from approving an application subject to changes in proffers agreed to by an applicant at the public hearing so long as the change imposes a more restrictive standard and the ordinance adopted accurately reflects such changes.

3. *Contents of proffer.* Proffered conditions shall be signed by all persons having an ownership interest in the property and shall be notarized. Proffered conditions shall contain a statement that the owners voluntarily enter into the conditions contained therein.

4. *Filing and notice of accepted proffers.* If the amendment to the zoning map is adopted subject to proffered conditions, then the property in question shall be appropriately annotated on the zoning map and the proffers shall be placed in the zoning administrator's official proffer file.

5. *Proffers govern development.* Upon final approval by the board of supervisors proffered conditions shall become a part of the zoning regulations applicable to the property unless subsequently changed by an amendment to the zoning map, which amendment is not part of a comprehensive implementation of a new or substantially revised zoning ordinance, and such conditions shall be in addition to the specific regulations set forth in this chapter for the zoning district in question.

6. *Substantial conformance required.* Upon approval of a rezoning with proffers, any site plan, subdivision plat, development plan or other application for development thereafter submitted shall be in substantial conformance with all proffered conditions. No development shall be approved by any county official in the absence of said substantial conformance.

7. *Substantial conformance defined.* For the purpose of this section, substantial conformance shall be determined by the zoning administrator and shall mean that conformance which leaves a reasonable margin for adjustment due to final design or engineering data but conforms with the general nature of the development, the specific uses, and the general layout depicted by the plans, profiles, elevations, and other demonstrative materials proffered by the applicant.

8. *Enforcement of proffers.* The zoning administrator shall be vested with all necessary authority on behalf of the board of supervisors to administer and enforce proffered conditions. Such authority shall include the ability to order, in writing, the remedy of any noncompliance with a proffered condition and the ability to bring legal action to ensure compliance including injunction, abatement, or other appropriate action or proceedings, as provided for in section 10-55 of this chapter. Any person, group, company, or organization aggrieved by an interpretation of the zoning administrator may appeal such interpretation as defined by subsection 11. of this subsection.

9. *Guarantee for construction of improvements.* A guarantee, satisfactory to the board, may be required in an amount sufficient for and conditioned upon the construction of any public improvements required by the proffered conditions. This guarantee may be reduced or released by the board or agent thereof, upon the submission of satisfactory evidence that the construction of such improvements has been completed in whole or in part. Said guarantee shall be required no later than final site plan or subdivision approval.

10. *No permits shall be issued not in compliance with proffers.* Failure to meet or comply with any proffered conditions shall be sufficient cause to deny the issuance of any site plan or subdivision approvals, grading permits, zoning permits, building permits, or certificates of occupancy as may be determined appropriate by the zoning administrator. In addition to the other penalties appropriate for violations of this chapter, failure to meet or comply with any proffered condition shall be sufficient cause to deny the issuance of any development approvals or permits relating to the land area which was the subject of the conditional zoning. To this end, each application for a development approval or permit shall include an affidavit by the applicant that all applicable proffers have or will be complied with as agreed upon at the time of rezoning. The

burden shall be on the applicant to verify that proposed development complies with any and all proffered conditions.

11. *Appeal of proffer decision.* Any person aggrieved by a decision of the zoning administrator regarding any proffered condition may appeal such decision to the board of supervisors. Such appeal shall be filed within thirty (30) calendar days from the date of the decision appealed by filing a notice of appeal with the zoning administrator. Such notice shall be a written statement specifying the grounds on which aggrieved and the basis for the appeal. Upon receipt of the appeal notice, the board of supervisors shall take such testimony as it deems appropriate and shall render its decision within sixty (60) calendar days after receipt of the appeal notice. The board of supervisors may reverse or affirm wholly or partly or may modify the decision of the zoning administrator.

(j) *Planning commission hearing.* No later than forty (40) calendar days after an application has been referred to the planning commission, the planning commission shall hold a duly noticed public hearing on an application for a zoning amendment.

(k) *Report by planning commission.* The planning commission shall report to the board of supervisors its recommendation with respect to the proposed amendment.

1. The planning commission need not confine its recommendation to the proposed amendment as set forth in the application. If the proposed amendment consists of a change in the text of this chapter, it may recommend a revision to the proposal. If the proposed amendment consists of a change in zoning district boundaries, it may reduce or enlarge the extent of land that it recommends be rezoned; or it may recommend that the land be rezoned to a different zoning district classification than that requested if, in either case, the commission is of the opinion that such revision is in accordance with sound zoning practice and the adopted comprehensive plan, and is in furtherance of the purposes of this chapter. Before recommending a larger extent of land or a rezoning to a more intensive classification than was set forth in the application, the commission shall hold an additional duly noticed public hearing on the matter.

2. In recommending the adoption of any proposed amendment to this chapter, the planning commission may state its reason for such recommendation, describing any changes in conditions, if any, that it believes make the proposed amendment advisable and specifically setting forth the manner in which, in its opinion, the proposed amendment would be in harmony with the adopted comprehensive plan and would be in furtherance of the purpose of this chapter.

3. *Text amendments.* If the request is for an amendment of the text of this chapter, the planning commission shall consider the following matters:

- a. Whether the proposed text amendment is consistent with the comprehensive plan.
- b. Whether the proposed text amendment is consistent with the intent and purpose of this chapter.

4. *Zoning map amendments.* If the application is for a reclassification of property to a different zoning district classification on the zoning map, the applicant shall address all the following in its statement of justification or plat unless not applicable. The planning commission shall give reasonable consideration to the following matters:

- a. Whether the proposed zoning district classification is consistent with the comprehensive plan.
- b. Whether there are any changed or changing conditions in the area affected that make the proposed rezoning appropriate.

- c. Whether the range of uses in the proposed zoning district classification are compatible with the uses permitted on other property in the immediate vicinity.
- d. Whether adequate utility, sewer and water, transportation, school and other facilities exist or can be provided to serve the uses that would be permitted on the property if it were rezoned.
- e. The effect of the proposed rezoning on the county's ground water supply.
- f. The effect of uses allowed by the proposed rezoning on the structural capacity of the soils.
- g. The impact that the uses that would be permitted if the property were rezoned will have upon the volume of vehicular and pedestrian traffic and traffic safety in the vicinity including any written comments provided by VDOT after review of the application for zoning amendment and whether the proposed rezoning uses sufficient measures to mitigate the impact of through construction traffic on existing neighborhoods and school areas.
- h. Whether a reasonably viable economic use of the subject property exists under the current zoning.
- i. The effect of the proposed rezoning on environmentally sensitive land or natural features, wildlife habitat, vegetation, water quality and air quality.
- j. Whether the proposed rezoning encourages economic development activities in areas designated by the comprehensive plan and provides desirable employment and enlarges the tax base.
- k. Whether the proposed rezoning considers the needs of agriculture, industry, and businesses in future growth.
- l. Whether the proposed rezoning considers the current and future requirements of the community as to land for various purposes as determined by population and economic studies.
- m. Whether the proposed rezoning encourages the conservation of properties and their values and the encouragement of the most appropriate use of land throughout the county.
- n. Whether the proposed rezoning considers trends of growth or changes, employment, and economic factors, the need for housing, probable future economic and population growth of the county.
- o. The effect of the proposed rezoning to provide moderate housing by enhancing opportunities for all qualified residents of Montgomery County.
- p. The effect of the rezoning on natural, scenic, archaeological, or historic features of significant importance.

The planning commission shall make its recommendation to the board within sixty (60) calendar days after the public hearing of the commission.

(l) *Hearing before board of supervisors.* A duly noticed public hearing shall be held by the board of supervisors regarding an application for zoning amendment.

(m) *Action by board of supervisors.* After the conclusion of its public hearing, the board of supervisors shall act on the application for rezoning. The board of supervisors need not confine its action to the proposed amendment as set forth in the application. If the proposed amendment consists of a change in the text of this chapter, it may act on a revision to the application. If the proposed amendment consists of a change in zoning district boundaries, it may reduce or enlarge the extent of land that it rezones or it may rezone the land to a different zoning district classification than that requested if, in either case, it is of the opinion that such revision is in accordance with sound zoning practice and the adopted comprehensive plan and is in furtherance of the purposes of this chapter. Before rezoning a larger extent of land or rezoning the land to a more intensive classification than was set forth in the application, the board shall hold a further duly noticed public hearing on the matter.

(n) *Evidentiary matters before board of supervisors.* All information, testimony or other evidence presented by an applicant for zoning amendment shall be presented to the planning commission in conjunction with its review and hearing on the application. If the

board of supervisors determines that an applicant is presenting evidence which is substantially or materially different from that presented to the commission, the board may refer the application back to the commission for such additional consideration and action as the board may deem appropriate.

(2) *Rezoning to planned unit development district.*

(a) *Purpose.* The provisions of this section establish special procedures for approving concept development plans for planned unit development districts. The procedures herein established are in recognition of the fact that traditional density, bulk, spacing and use regulations, which may be useful in protecting the character of substantially developed areas, may impose inappropriate and unduly rigid restrictions upon the development of parcels or areas which lend themselves to a unified, planned approach. A planned unit development shall be designed to ensure that the following general goals will be achieved.

1. The proposed development shall be of such design that it promotes achievement of the stated purposes of the comprehensive plan and is consistent with the plan as well as other adopted plans and policies of the county.
2. The development will efficiently use available land and will protect and preserve, to the extent possible, natural features of the land such as trees, streams and topographic features.
3. The development will be located in an area in which transportation, police and fire protection, schools and other public facilities and public utilities, including water and sewerage, are or will be available and adequate for the uses proposed. The applicant may, where appropriate, make provision for such facilities or utilities which are not presently available.

(b) *Modifications.* The regulations of the PUD district sought shall apply after rezoning is approved unless the board of supervisors finds that the zoning, subdivision or other requirements that would otherwise apply should be modified because the actions, designs or solutions proposed by the applicant, although not literally in accord with the applicable regulations, will satisfy public purposes to at least an equivalent degree. No modifications shall be permitted which affect uses, density, or floor area ratio of the district. Modifications to an approved concept development plan may be approved as set forth in subsection (i), herein below.

(c) *Concept development plan/submission requirements; purpose and effect.* An application for rezoning to a planned unit development district shall include a concept development plan incorporating the format and information required as detailed in the PUD checklist, a Traffic Impact Statement if the proposed PUD will substantially affect transportation on State controlled highways as determined by the Department of Transportation Traffic Impact Analysis Regulations, Chapter 155, 24 VAC 30-155, et seq. and such additional information as the applicant may deem necessary to provide a detailed understanding of the proposed planned unit development. The number of copies shall be determined by the zoning administrator.

(d) *Contents of an approved concept development plan.* The concept development plan shall contain provisions to regulate the intensity of development within the planned unit development district, including estimated acreage of land bays or subareas with accompanying densities. Such provisions may apply to the project as a whole or to subareas within the project. Without limiting the foregoing, the plan shall depict:

1. *Nonresidential densities.* For nonresidential development, (a) the floor area ratio or ratios; (b) the maximum gross floor area for the project as a whole or for components or subareas within the project; (c) the setbacks, height, and bulk restrictions for the project as a whole or for components or subareas within the project. In addition, nonresidential development plans shall specify any applicable performance standards that are imposed and restrictions regarding the location and nature of industrial, commercial and other nonresidential activities.

2. *Residential densities.* For residential developments, (a) the maximum number of dwelling units for the project, (b) individual lot size, height and other building restrictions for the project as a whole or for individual subareas within the project; and (c) the distribution of residential densities for the project or individual subareas within the project sufficient to enable the county to judge the plan and compare future development to it for consistency.

3. *Public facilities.* For residential and nonresidential developments, the approved conditions, restrictions and standards relating to ensuring the timely provision of necessary public facilities based on conformity with the existing comprehensive plan and capital improvements program and any proffers made by the applicant.

4. *Transportation/access.* For residential and nonresidential development, the approved location and general design of transportation improvements and ingress and egress to the project, along with such access restrictions as are imposed to promote and ensure the integrity and function of the county's thoroughfare system and the safe and efficient circulation of vehicles and pedestrians within the planned unit development district.

5. *Modification.* For residential and nonresidential developments, any approved modifications to any provisions of this chapter, the land subdivision and development ordinance, or any other applicable county ordinance which would otherwise be applicable to the development and which are to be modified. The statement regarding modifications shall set forth clearly the text of the approved modification and the justification therefore.

(e) *Optional joint approvals.* At the applicant's option, an application for site plan and/or preliminary subdivision plat approval may be submitted in conjunction with an application for a rezoning to a planned unit development district. In such case, the applications shall be reviewed together pursuant to their respective standards, the time limits for rezoning shall apply to the joint application, and no approval of a site plan or preliminary subdivision plat shall be effective unless and until the application for rezoning to planned unit development has been approved by the board of supervisors. The application for site plan and/or subdivision approval may be for the entire planned unit development site or for a phase thereof which is consistent with the phasing plan ultimately adopted by the board.

(f) *Approved changes to concept development plan after approval.*

1. *Minor change.* Any proposed change or changes to an approved concept development plan which meets the following criteria shall be considered a minor change and may be permitted if approved by the zoning administrator.

- a. Decreases by less than five (5) percent the area approved for public and private open space.
- b. Relocates or modifies approved circulation elements as a result of more detailed engineering or changes requested by staff or VDOT, unless the change would decrease the ability of such elements to function efficiently, adversely affect their relation to surrounding lands and circulation elements, or would reduce their effectiveness as buffers or amenities.
- c. Any decrease in residential units or nonresidential floor space.

2. *Special use permit change.* The following change or changes to an approved development plan may be made by special use permit approved by the board of supervisors.

- a. Increases by less than five (5) percent of the total number of units to be devoted to any particular residential or nonresidential use.

- b. Increases by less than five (5) percent of the total floor area to be devoted to any particular nonresidential use.
- c. Alteration of the arrangement of land uses, or land bays, within the planned unit development.

3. *Major change.* Other than the minor adjustments authorized by subsection 1. above, if an approved development plan is amended, varied or altered, such change shall be reviewed pursuant to the procedures established by this section for its original approval.

4. *Minimum submission requirements.* The minimum submission requirements for changes to an approved concept development plan shall be the same for either a new or an amended plan. Changes being made may be shown only for those areas affected, not the entire concept development plan.

(3) *Special use permits.*

(a) *Purpose.* The special use permit procedure is designed to provide the board of supervisors and in those specific instances, the Board of Zoning Appeals with an opportunity for discretionary review of requests to establish or construct uses or structures which have the potential for a deleterious impact upon the health, safety, and welfare of the public; and, in the event such uses or structures are approved, the authority to impose conditions that are designed to avoid, minimize or mitigate potentially adverse effects upon the community or other properties in the vicinity of the proposed use or structure.

(b) *Authorized special use permit uses.* Only those special use permits that are expressly authorized as such in a particular zoning district, or elsewhere in this chapter may be approved.

(c) *Review of application.* The board of supervisors and in those specific instances, the board of zoning appeals may permit a special use permit as part of a zoning map amendment, or by special use permit procedures at any time after a zoning map amendment.

(d) *Application.* An application for a special use permit from the board of supervisors shall be filed, contain such material and be processed in the same general fashion as detailed for zoning amendments at subsections (1)(c) through (g). An application for a special use permit from the board of zoning appeals shall be made to the zoning administrator in accordance with the rules adopted by the board of zoning appeals. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board who shall place the matter on the docket to be acted upon by the board. The zoning administrator shall transmit a copy of the application to the planning commission which may send a recommendation to the board of zoning appeals or appear as a party at the hearing.

(e) *Planning commission hearing.* Prior to a decision by the board of supervisors each application for special use permit shall be the subject of a public hearing and a recommendation made by the planning commission.

(f) *Board hearing.* A duly noticed public hearing on an application for a special use permit shall be held by the board of supervisors and in those specific instances, the board of zoning appeals and a decision made by it within a reasonable time, not to exceed one year from the date on which the application was accepted for processing unless the applicant agrees to a longer time period.

(g) *Issues for consideration.* In considering a special use permit application, the following factors shall be given reasonable consideration. The applicant shall address all the following in its statement of justification or special use permit plat unless not applicable, in addition to any other standards imposed by this chapter:

1. Whether the proposed special use permit is consistent with the comprehensive plan.
2. Whether the proposed special use permit will adequately provide for safety from fire hazards and have effective measures of fire control.
3. The level and impact of any noise emanating from the site, including that generated by the proposed use, in relation to the uses in the immediate area.
4. The glare or light that may be generated by the proposed use in relation to uses in the immediate area.
5. The proposed location, lighting and type of signs in relation to the proposed use, uses in the area, and the sign requirements of this chapter.
6. The compatibility of the proposed use with other existing or proposed uses in the neighborhood, and adjacent parcels.
7. The location and area footprint with dimensions (all drawn to scale), nature and height of existing or proposed buildings, structures, walls, and fences on the site and in the neighborhood.
8. The nature and extent of existing or proposed landscaping, screening and buffering on the site and in the neighborhood.
9. The timing and phasing of the proposed development and the duration of the proposed use.
10. Whether the proposed special use permit will result in the preservation or destruction, loss or damage of any topographic or physical, natural, scenic, archaeological or historic feature of significant importance.
11. Whether the proposed special use permit at the specified location will contribute to or promote the welfare or convenience of the public.
12. The traffic expected to be generated by the proposed use, the adequacy of access roads and the vehicular and pedestrian circulation elements (on- and off-site) of the proposed use, all in relation to the public's interest in pedestrian and vehicular safety and efficient traffic movement including any written comments provided by VDOT after review of the special use permit application.
13. Whether, in the case of existing structures proposed to be converted to uses requiring a special use permit, the structures meet all code requirements of Montgomery County.
14. Whether the proposed special use permit will be served adequately by essential public facilities and services.
15. The effect of the proposed special use permit on groundwater supply.
16. The effect of the proposed special use permit on the structural capacity of the soils.
17. Whether the proposed use will facilitate orderly and safe road development and transportation.
18. The effect of the proposed special use permit on environmentally sensitive land or natural features, wildlife habitat and vegetation, water quality and air quality.
19. Whether the proposed special use permit use will provide desirable employment and enlarge the tax base by encouraging economic development activities consistent with the comprehensive plan.
20. Whether the proposed special use permit considers the needs of agriculture, industry, and businesses in future growth.
21. The effect of the proposed special use permit use in enhancing affordable shelter opportunities for residents of the county.
22. The location, character, and size of any outdoor storage.
23. The proposed use of open space.
24. The location of any major floodplain and steep slopes.
25. The location and use of any existing nonconforming uses and structures.
26. The location and type of any fuel and fuel storage.
27. The location and use of any anticipated accessory uses and structures.
28. The area of each use, if appropriate.
29. The proposed days/hours of operation.
30. The location and screening of parking and loading spaces and/or areas.
31. The location and nature of any proposed security features and provisions.
32. The number of employees.
33. The location of any existing and/or proposed adequate on- and off-site infrastructure.

34. Any anticipated odors which may be generated by the uses on site.
35. Whether the proposed special use permit uses sufficient measure to mitigate the impact of construction traffic on existing neighborhoods and school areas.

(h) *Conditions and restrictions.* In approving a special use permit, the board of supervisors or in those specific instances the board of zoning appeals may impose such conditions, safeguards and restrictions upon the premises benefited by the special use permit as may be necessary to avoid, minimize or mitigate any potentially adverse or injurious effect of such special use permits upon other property in the neighborhood, and to carry out the general purpose and intent of this chapter. Conditions and restrictions may include, but are not limited to, those related to fencing, planting or other landscaping, additional set backs from property lines, location and arrangement of lighting, setting of reasonable time limitations and other reasonable requirements deemed necessary to safeguard the interest of the general public. The boards may require a guarantee or bond to ensure that conditions imposed will be complied with. All required conditions shall be set out in the documentation approving the special use permit.

(i) *Effect of issuance of a permit for a special use permit.* The issuance of a permit for a special use permit shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for any permits or approvals which may be required by the codes and ordinances of the county, including, but not limited to, a building permit, a certificate of occupancy, site plan and subdivision approval and a zoning permit.

(j) *Period of validity.*

1. Authorization of a special use permit shall be void after two (2) years or such lesser time as the authorization may specify unless substantial construction has taken place, however, the board of supervisors or in those specific instances, the board of zoning appeals may extend authorization for an additional period not to exceed one (1) year, upon request by the applicant.
2. If any special use authorized by this article is discontinued for a period exceeding two (2) years, it shall be deemed abandoned, and the special use permit shall be void.

ARTICLE VI. DEFINITIONS

Sec. 10-61. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section. Any word, term or phrase used in this ordinance not defined below shall have the meaning ascribed to the word in the most recent edition of Webster's Unabridged Dictionary, unless in the opinion of the zoning administrator, established customs or practices of the County of Montgomery, Virginia, justify a different or additional meaning. Further, for the purpose of this chapter, certain words and terms are to be interpreted as follows:

- (1) Words used in the present tense include the future; words used in the masculine gender include the feminine and neuter; words in the singular number include the plural; and words in the plural include the singular, unless the obvious construction of the wording indicates otherwise.
- (2) The word "shall" is mandatory.
- (3) Unless otherwise specified, all distances shall be measured horizontally and at right angles or radially to the line in relation to which the distance is specified.
- (4) Unless otherwise specified, the term "day" shall mean working day (Monday through Friday).

- (5) The word "lot" includes the word plot; the word "used" includes the terms designed, intended, arranged or to be used.
- (6) The terms "land use" and "use of land" shall include the use of buildings and structures.

The following is hereby added as an additional definition under the above referenced Article and shall be placed alphabetically therein.

Traffic Impact Statement means a statement that assesses the impact of a proposed development on the transportation system and recommends improvements to lessen or negate those impacts. The Traffic Impact Statement shall (1) identify any traffic issues associated with access from the site to the existing transportation network; (2) outline solutions to potential problems; (3) address the sufficiency of the future transportation networks and (4) present improvements to be incorporated into the proposed development. The Traffic Impact Statement shall comply with the requirements contained in the Virginia Department of Transportation Traffic Impact Analysis Regulations, Chapter 155, 24 VAC 30-155-60. If a Traffic Impact Statement is required, data collection shall be by the developer or owner and the developer or owner shall prepare the Traffic Impact Statement.

The vote on the foregoing ordinance was as follows:

<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
James D. Politis	None	Gary D. Creed
Doug Marrs		Annette S. Perkins
Mary W. Biggs		
John A. Muffo		
Steve L. Spradlin		

The Planning Director commented that this ordinance is necessary to comply with changes made by the Virginia Department of Transportation.

NEW BUSINESS

INDUSTRIAL DEVELOPMENT AUTHORITY – SERIES 2004 BOND REFINANCING

On a motion by James D. Politis, seconded by Mary W. Biggs and carried unanimously, the Board hereby postpones the IDA’s request to refinance the Series 2004 Bond Refinancing to the September 24, 2007 Board of Supervisors meeting in order to receive additional information from the County’s Bond Counsel.

The vote on the foregoing motion was as follows:

<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Mary W. Biggs	None	Gary D. Creed
John A. Muffo		Annette S. Perkins
James D. Politis		
Doug Marrs		
Steve L. Spradlin		

A-FY-08-43
ESCROW REQUESTS
COUNTY DEPARTMENTS

On a motion by Mary W. Biggs, seconded by James D. Politis and carried unanimously,

BE IT RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that the General Fund was granted an appropriation in addition to the annual appropriation for the fiscal year ending June 30, 2008, for the function and in the amount as follows:

100	Board of Supervisors	\$3,800
110	County Administration	\$58,548
130	Financial and Management Services	\$12,800
162	Treasurer – Collections	\$1,271
200	Commonwealth Attorney	\$1,562
210	Circuit Court I	\$1,600
230	Juvenile Domestic Relations	\$5,605
250	Circuit Court Clerk	\$4,000
320	Sheriff – County	\$109,035
400	General Services	\$10,000
520	Human Services	\$2,064
700	Parks and Recreation	\$5,948
710	Regional Library	\$82,111
720	Floyd Library	\$38,001
820	Planning and GIS	\$77,668
910	Outside Agencies-Montgomery Museum	<u>\$59,882</u>
	Total	\$473,895

The source of the funds for the foregoing appropriation is as follows:

Revenue Account

451203	Undesignated Fund Balance	\$473,895
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Said resolution appropriates amounts recommended to be escrowed for use in the current year to complete projects and to provide funding for liabilities over and above those encumbered by purchase orders.

The vote on the foregoing resolution was as follows:

<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
John A. Muffo	None	Gary D. Creed
James D. Politis		Annette S. Perkins
Doug Marrs		
Mary W. Biggs		
Steve L. Spradlin		

School Escrow Request

The County Administrator reported that Supervisor Perkins requested this item be removed and added to the next agenda since she was not able to be present at tonight's Board meeting.

School Escrow Request - Postponed

On a motion by Mary W. Biggs, seconded by James D. Politis and carried unanimously, the Board postponed the Montgomery County School Board's request to escrow remaining monies at June 30, 2007 to the September 24, 2007 Board of Supervisors meeting in order for all Board members to be in attendance.

The vote on foregoing motion was as follows:

<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
James D. Politis	None	Gary D. Creed
Doug Marrs		Annette S. Perkins
Mary W. Biggs		
John A. Muffo		
Steve L. Spradlin		

Supervisor Biggs asked if Walt Shannon, MCPS Assistant Superintendent of Operations, provide an explanation as to why the remaining balance at year end in the School's budget is higher than usual. She has received numerous comments and questions from school employees related to the excess funds remaining at year end and asked why a portion of this money could not be used toward a one-time employee bonus.

Mr. Shannon reported that in response to the School's Efficiency Audit Report, which recommended that the School Administration submit more timely their request for federal reimbursements in order to receive the reimbursements in the same fiscal year, hired a part-time employee to submit these federal reimbursements in a more timely manner. This created an additional one-time revenue surplus of \$1.3 million. The procedure for requesting reimbursements also changed from paper format to a state on-line Omega system, and reimbursements are received within a month versus 2-3 months. Mr. Shannon stressed that this is a one-time only surplus.

The School Board is requesting that monies remaining at year end totaling \$2.8 million be carried forward to FY 07/08, with \$1.8 million of these funds to be used for maintenance projects. The balance of monies will be used for school bus purchase, update radio equipment for school busses, replacement of support vehicles, and update kitchen equipment for older school buildings.

Mr. Shannon stated he would take the Board's comments regarding the surplus revenue and the possible employee bonus back to the School Board. He commented that he would not recommend using the entire \$1.8 million for bonuses as there is much needed maintenance projects that need to be completed.

Chair Spradlin recommended that the School Board send a letter explaining how they would like to use the remaining funds. It is not the desire of the Board of Supervisors to direct the School Administration to grant employee bonuses, that decision would be at the discretion of the School Board. The Board of Supervisors is forwarding comments they have received regarding the school's remaining balance at year end.

**A-FY-08-44
RINER RESCUE SQUAD
APPROPRIATION**

On a motion by James D. Politis, seconded by Mary W. Biggs and carried unanimously,

BE IT RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that the General Fund is granted an appropriation in addition to the annual appropriation for the fiscal year ending June 30, 2008, for the function and in the amount as follows:

942	Transfer to County Capital Projects Fund	\$10,000
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The source of funds for the foregoing appropriation is as follows:

451203	Undesignated Fund Balance	\$10,000
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BE IT FURTHER RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that the County Capital Projects Fund is granted an appropriation for the fiscal year ending June 30, 2008, for the function and in the amount as follows:

12	County Capital Projects	
330	Riner Rescue	\$10,000

The source of funds for the foregoing appropriation is as follows:

<u>Revenue Accounts:</u>		
451100	Transfer from General Fund	\$ 10,000

Said resolution appropriates additional funds to complete the Riner Rescue Squad building.

The vote on the foregoing resolution was as follows:

<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Doug Marrs	None	Gary D. Creed
Mary W. Biggs		Annette S. Perkins
John A. Muffo		
James D. Politis		
Steve L. Spradlin		

R-FY-08-35
PROCLAMATION
SUPPORTING LOCAL RESCUE SQUAD PERSONNEL
IN STATE OFFICER ELECTIONS

On a motion by Doug Marrs, seconded by Mary W. Biggs and carried unanimously,

WHEREAS, M. Wayne Myers Jr., does seek the Office of State President of the Virginia Association of Volunteer Rescue Squads (VAVRS); and

WHEREAS, Rickey L. Hodge, does seek the Office of State Training Officer for the VAVRS; and

WHEREAS, Both have devoted their volunteer service to the citizens of Montgomery County and the Town of Blacksburg for over 64 years collectively and held several offices within their local squads, also serving as district officers filling various offices and roles; and

WHEREAS, Both have represented the County on numerous occasions at the local, district, and state level with a sense of professionalism and knowledge based on their years of experience and training; and

WHEREAS, Both have received honors from their local, district, and state organizations for their efforts and expertise, and have the support of the VAVRS nominating committee and their local squad; and

WHEREAS, Both **Mr. Myers** and **Mr. Hodge** have, without consideration of their personal safety, went above and beyond the call of duty to aide and assist our citizens in their greatest time of need, and have potentially saved numerous lives.

NOW, THEREFORE, BE IT RESOLVED, The Board of Supervisors of Montgomery County, Virginia, does hereby proclaim their support for **M. Wayne Myers** for State President of the VAVRS and **Rickey L. Hodge** for State Training Officer for the VAVRS.

BE IT FURTHER RESOLVED, The Board of Supervisors encourages the voting membership of the VAVRS to support these men in the election to the offices they seek.

The vote on the foregoing resolution was as follows:

<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Mary W. Biggs	None	Gary D. Creed
John A. Muffo		Annette S. Perkins
James D. Politis		
Doug Marrs		
Steve L. Spradlin		

COUNTY ADMINISTRATOR'S REPORT

NRV Community Broadband Network

The County Administrator provided an update on the request by the NRV Planning District Commission for the County to participate in the development of the NRV Network Wireless

Authority in order to construct a 60 mile fiber line at a cost of \$5 million. The main obligation of the Authority would be to morally back the borrowing of \$2.5 million needed to match the EDA grant.

The County Administrator reported that he believes there still is insufficient information to recommend approval of this request. This does not mean that there is opposition to the principal of establishing such an Authority. He suggested that the Board of Supervisors grant him the authority to write a letter to the PDC stating that Montgomery County continues to support the concept of a New River Valley Broadband Wireless Authority; however, insufficient information has been received to properly process the request. The County Administrator and staff will continue to negotiate with the PDC staff to collect sufficient information in order that the County can conduct sufficient due diligence before formally authorizing the County's participation in the Authority. The PDC is encouraged to pursue an EDA grant to assist in funding the necessary improvements for the establishment of an Authority, but Montgomery County cannot formally authorize its participation in the Authority until negotiations are concluded.

The County Administrator has learned that Giles County will not participate as they are seeking to privately construct a fiber line.

By consensus of the Board the County Administrator was authorized to send a letter to the New River Valley PDC stating that Montgomery County cannot make a commitment to participate in the Authority at this time.

Secondary & Primary Six-Year Road Improvement Plan

The County Administrator reported that the County was notified by VDOT that the Secondary Six-Year Road Improvement Plan would be due in the Spring of 2008, therefore, their joint public hearing with VDOT can be held in January or February 2008. Also, the public comment meeting for the Six-Year Interstate and Primary Roads is scheduled for October 24, 2007. Last year Supervisor Politis, Supervisor Marrs and the County Administrator attended on behalf of Montgomery County.

BOARD MEMBERS' REPORT

Supervisor Biggs submitted information from the School Board meeting to be included in the Board's Friday Report. Phyliss Albritton was appointed to the School Board to fill the vacant seat for District A. Also, a reminder that the School Board will be conducting a community meeting in Prices Fork at the Prices Fork Elementary School to discuss the new school construction.

Hokie Nation Supervisor Biggs and Supervisor Muffo attended the Hokie Nation film produced by Chris Valluzzo and Sean Kotz. It was really enjoyable.

Supervisor Marrs attended the Western Virginia Regional Jail Authority meeting on September 6, 2007. The construction of the jail is progressing nicely. The jail will be a total of 26 acres under roof. The WVRJA has offered to give tours of the construction site for any Board members who are interested.

Supervisor Politis reported the Riner Heritage Day was September 8, 2007. This year was by far the most attended in the history of Riner Heritage Day. The Riner Cannery's apple butter demonstration was very popular.

ADJOURNMENT

On a motion by Mary W. Biggs, seconded by James D. Politis and carried unanimously, the Board adjourned to Monday, September 24, 2007 at 6:00 p.m.

The vote on the foregoing motion was as follows:

<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
John A. Muffo	None	Gary D. Creed
James D. Politis		Annette S. Perkins
Doug Marrs		
Mary W. Biggs		
Steve L. Spradlin		

The meeting adjourned at 8:15 p.m.

APPROVED:_____	ATTESTED:_____
Steve L. Spradlin	B. Clayton Goodman, III
Chair	County Administrator